

# CHINA'S SHARP POWER IN HONG KONG

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# China's Sharp Power in Hong Kong

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# List of Abbreviations

<i>Abbreviation</i>	<i>Explanation</i>
CCP	Chinese Communist Party
CCR	Chinese Communist Regime
CE	Chief Executive
CEPA	Closer Economic Partnership Arrangement
CFA	Court of Final Appeal
CLO	Chinese Liaison Office
CPPCC	Chinese People's Political Consultative Conference
EDB	Education Bureau
FC	Functional constituencies
FTA	Free Trade Agreements
GC	Geographical constituencies
HKCC	Hong Kong Christian Council
HKCCCU	Hong Kong Chinese Christian Churches Union
HKEP	Hong Kong Educational Publishing Company
HKNP	Hong Kong National Party
HKSAR	Hong Kong Special Administrative Region
HKU	University of Hong Kong
ICCPR	International Covenant on Civil and Political Rights



KOL	Key opinion leader
LegCo	Legislative Council
LS	Liberal Studies
MoE	Ministry of Education
NAL	National Anthem Law
NC	Nominating Committee
NGO	Non-governmental organisation
NPCSC	National People's Congress Standing Committee
PRC	People's Republic of China
ROP	Rules of Procedure
WTO	World Trade Organisation

# About Hong Kong Civil Hub

Hong Kong Civil Hub is a newly established civil society group in Hong Kong. It aims to serve as a bridge connecting the Hong Kong civil society with international stakeholders sharing the same values in upholding and pursuing the rule of law, democracy and human rights. International cooperation with Hong Kong in these areas will be facilitated. To achieve this goal, Hong Kong Civil Hub plans to provide regular analyses on the latest political and civil society development in Hong Kong to international media, think-tanks, civil society groups and policy communities.

# Contributors

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**Hon-chak LAM** is a business economist in Hong Kong. We worked in the same capacity in London before returning to his home city.

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**Benny Yiu-ting TAI** was born and educated in Hong Kong. He graduated from the University of Hong Kong and got his LL.B. in 1986 and P.C.L.L. in 1987. In 1989, he went to London to study at the London School of Economics and Political Science and obtained his LL.M. (major in public law) in 1990. In 1991, he joined the Department of Law of the University of Hong Kong as a lecturer/assistant professor and is now an associate professor in Law at the University of Hong Kong. He specialises in constitutional law, administrative law, human rights law and law and religion. He was the Associate Dean of the Faculty of Law, the University of Hong Kong from 2000 to 2008. His current research projects include the rule of law and legal culture, political legitimacy and constitutional development, governance and law, law and religion. He was one of the initiators of the Occupy Central with Love and Peace campaign, a movement to exert pressure on the Chinese authorities to honour the promise of allowing Hong Kong people to elect their Chief Executive in 2017 through universal and equal suffrage.

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# China's Sharp Power in Hong Kong

The Chinese Communist Regime (“CCR”) in China may be the world’s most powerful authoritarian regime. It has developed sophisticated strategies and skills to suppress opposition at home as well as to project influence beyond its border. There are many tools of sharp power in its toolbox of manipulation.

These tools of sharp power have been tested in Hong Kong before they are being applied in other parts of the world. Hong Kong has been the experimental ground of China’s sharp power.

The Umbrella Movement in 2014 was the high mark of Hong Kong people’s demand for the introduction of genuine democratic elections in Hong Kong but the CCR suppressed such demand. In the post-Umbrella era, the ultimate goal of the CCR is to help the Chief Executive (“CE”), who will never be democratically elected and must be under CCR’s direction, find more political legitimacy. If this is successful, there will be no need to introduce genuine democracy in Hong Kong. The CCR worries that once democratic elections are fully implemented in Hong Kong, the control over the territory would be lost and Hong Kong could be used as a base of subversion to threaten the CCR’s rule in Mainland China.

At least in the following areas, the CCR intensifies its uses of different tools of sharp power to pressurise, neutralise, weaken or silence any constraining power that is still active in Hong Kong.

## **Rule of Law**

The official understanding of the rule of law promoted by the CCR puts maintaining social order as the overriding function of law even at the costs of granting arbitrary powers to government of officials and restricting fundamental rights of citizens disproportionately. This narrow understanding of the rule of law is being used to legitimise the use of law to disqualify anti-CCR legislators and candidates, to generate a chilling effect in the society to silence anti-CCR voices, to weaken anti-CCR political groups in Hong Kong and to introduce measures that will hurt the autonomy of Hong Kong.

## **Civil Society**

The legal and political environments for civil society have deteriorated rapidly. The freedom of association has been challenged by the authorities by rejecting the registration applications of groups promoting civil disobedience, self-determination or Hong Kong independence. The freedom of assembly and demonstration is at risk as the authorities have taken advantage of the restrictive Public Order Ordinance and other Common Law charges to prosecute more protestors with more severe offences. The authorities and their surrogate

groups also exercise their sharp power to harass and bully people participating in political assemblies and demonstrations.

### **Elections**

The electoral system of Hong Kong has been subject to constant and immense manipulation by the CCR regime through infiltration and divide-and-rule strategies. Disqualification of candidates have jeopardised fundamental political rights of Hong Kong people, produced a chilling effect among pro-democracy politicians and killed hopes of the new generation of Hong Kong. Gerrymandering, unlawful voter planting, as well as various luring and mobilising tactics by the CCR, have also effectively boosted the winning chance of pro-CCR candidates. The crippled LegCo vote counting system and the distorted LegCo Rules of Procedure have made any substantive legal reform very difficult, if not impossible. Hong Kong has not enacted any political parties law, and all pro-democracy political organisations are vulnerable to be labelled as societies against national security and subsequently outlawed and penalised.

### **Media**

After 20 years, the CCR has become more impatient about the situation of Hong Kong. Major Hong Kong media organisations are being used to fulfil the agenda of the CCR. First, through acquisition, the CCR can fundamentally change the stance of the media organisation. Top managers planted in the media organisation can serve as agents of the CCR to execute its will on a daily operational basis. Second, by drawing a moving political redline in the name of national security and declaring war on those who breach it, a chilling effect can be generated. Third, physical assault and forced disappearance can result in the termination or suspension of media operation. Media organisation can also be used for propaganda such as participating in a scripted and staged interview of human rights victims.

### **Academic Freedom and Education**

Hard power and soft power are exercised interchangeably, mutually strengthened and become a “sharp” strategy towards Hong Kong’s education. Various tools of sharp power are being used. They include enactment of the National Anthem Law and the introduction of national anthem education, manipulation of the appointment and dismissal processes of key positions in educational institutions, control over decision-making mechanisms on education issues, influence on the development of school curriculum and publication of textbooks, interference by pro-Beijing non-governmental organizations, award schemes and exchange programs.

### **Religion**

The concept of China factor can illustrate how the CCR absorbed and mobilised the religious sector of Hong Kong before and after the handover in 1997. It includes the following approaches: manipulating the religious sector representative mechanism, imposing the Chinese concept of separation of Church and State, articulating the patriotic ideology of “Love Hong Kong and love the

religion”, and establishing the model of “State-lead, Church-follow” in Hong Kong. The Chinese influence exhibited directly or indirectly may also reveal the operation of China’s sharp power in the local religious realm.

### **Economic Affairs**

China’s economic sharp power in Hong Kong involves the manipulation of information, limiting any meaningful choices available to economic agents, thereby enabling China to achieve certain economic and political goals, mostly to enhance China’s strength. These policies seemed benign and attractive at first, but have proven to have adverse effects on Hong Kong, and the impact could extend beyond economic losses. They may cause irrevocable changes in the local economy, and in some cases, caused the loss of core economic strengths. This reduces Hong Kong’s bargaining position when negotiating policies with China, and means losing out on influencing future strategic decisions that affect Hong Kong.

Hong Kong is now at the forefront of the conflicts between the liberal world and the authoritarian world. We hope that members of the international community who share the same vision can join forces with Hong Kong people to fight back China’s sharp power by doing the following things:

1. To build long-term and multi-dimensional international linkages between civil societies around the world and the civil society of Hong Kong.
2. To establish foundations to fund scholarships in Hong Kong study, programs and projects on Hong Kong.
3. To arrange election monitoring by independent and international observers in future elections in Hong Kong.
4. To pay close attention to any incident of abuse of the rights of Hong Kong people by China’s hard and sharp powers and to issue strong statements of condemnation in cases of human rights infringement.
5. To demand direct responses from Beijing or Hong Kong officials concerning issues of democratic development, maintenance of the rule of law, and human rights infringements in Hong Kong.

# The Rise of China's Sharp Power in Hong Kong

There are clear signs indicating that there is a global trend of resurgence of authoritarianism and retreat of democracy. The Chinese Communist Regime (“CCR”) in China may be the world’s most powerful authoritarian regime. It has developed sophisticated strategies and skills to suppress opposition at home as well as to project influence beyond its border.

In the toolbox of manipulation of the CCR, in addition to tools of hard power like military force or economic might which can coerce or induce compliance directly, there is a new set of tools of sharp power. Sharp power may not be hard in the sense of openly coercive. However, it is also not like soft power which aims to affect others by harnessing the allure of culture and values by attraction and persuasion.

The Economist in a cover article points out that sharp power is “a series of interlocking components: subversion, bullying and pressure, which combine to promote self-censorship.” Christopher Walker and Jessica Ludwig illustrate sharp power as the tip of a dagger or a syringe in the sense that it can “pierce, penetrate, or perforate.” In effect, these tools of sharp power deceive, manipulate, intimidate, confuse, divide and repress. Like hard power, sharp power is equally malign and aggressive in advancing values of authoritarianism legitimising monopoly of power, top-down control, censorship, and coerced or purchased loyalty. The difference is that tools of sharp power may be sugarcoated or by their nature can poison the information environments making it very deceptive and difficult to discern.

Hong Kong is a very special place in China, in Asia and around the world. It was one of the four little dragons of Asia impressing the world by her rapid economic growth in the 1970s and 1980s. Now, Hong Kong has developed into one of the international financial centres.

Hong Kong is not genuinely democratic, neither is it totally authoritarian. Hong Kong was a British colony but did not follow the typical path of decolonisation to become an independent state following a process of democratisation. During the colonial years, a common law system was transplanted to Hong Kong, and it continues to thrive. Limited elections were introduced into Hong Kong in the final years of the colonial rule.

China resumed to exercise sovereignty over Hong Kong in 1997 in accordance with an agreement signed between the Chinese and the United Kingdom governments in 1984. Under the agreement, Hong Kong would be allowed to continue to practice her economic, social, political and legal systems which are very different from the systems in Mainland China. According to the policy of “One Country Two Systems” advocated by the CCR, Hong Kong becomes a special administrative region of China and enjoys a high degree of autonomy.

Like colonial Hong Kong, both democratic and authoritarian elements can still be found in the Hong Kong Special Administrative Region (“HKSAR”). Limited elections con-



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tinue. More importantly, Hong Kong can maintain a strong rule of law through which the powers of the government are effectively constrained, and citizens' fundamental rights are adequately protected. There is also a clear timetable that the Chief Executive ("CE") and all members of the Legislative Council ("LegCo") of the HKSAR will be ultimately elected by universal suffrage.

In the early years of the HKSAR, the CCR respected Hong Kong's autonomy as there was no need to interfere directly with the local affairs. Hong Kong was in the hands of the First CE of the HKSAR, Tung Chee-hwa, and the CCR well trusted him. Tung, a businessman with a long-term relationship with the CCR, was selected and appointed by the CCR with little participation by the general public in Hong Kong.

Since 2003, interferences into the local affairs in Hong Kong by the CCR gradually increased. The triggering point was the half-a-million-person rally on July 1, 2003. Major streets in Hong Kong were blocked by angry protesters demonstrating their dissatisfaction and demanding the resignation of Tung for his poor governance. It marked the first territory-wide campaign against the illegitimate HKSAR Administration. As a result, the controversial national security legislation was abandoned. Tung resigned 20 months later.

Recognizing that just having a trustworthy person to be the CE was not enough to maintain the undemocratic rule, the CCR started to infiltrate into different sectors of the community through the use of various tools of sharp power. The aim is to enlist support and silence opposition in the city so that the HKSAR Administration would still be considered to be legitimate without full-scale democratic elections.

Even though the CCR promised in 2007 that election of the CE by universal suffrage would be introduced in 2017, it planned to allow Hong Kong only to have a controlled form of election. There can be a limited degree of competition to select future CEs to compensate for the political legitimacy deficit long suffered by the HKSAR Government, but there must be an effective mechanism to ensure that the elected CE would still be under the CCR's control.

In response to the political pressure generated by the Occupy Central with Love and Peace Movement in 2013-2014, the Standing Committee of the National People's Congress ("NPCSC"), a legislative arm of the CCR, issued a decision on the election method of the CE on 31 August 2014 ("Decision"). Stringent requirements on the election method of the CE, intended to start from 2017, were laid down in the Decision. The number of members, composition and formation of the nominating committee (NC) are to be made in accordance with the election committee for the previous CE. The NC can only nominate two to three candidates. Each candidate must have the endorsement of more than half of all the members of the NC.

These specific arrangements on the nomination process enable the CCR to screen out any unwanted candidate. As such, they cannot satisfy the international requirements on universal suffrage since Hong Kong electors would not have a

free choice of candidates and unreasonable restrictions would be imposed on the right of any person to stand for future CE elections. The Decision triggered the 79-day occupation of the Umbrella Movement in late 2014. After the end of the occupation, the constitutional proposal to implement the Decision was vetoed by the opposition camp as it failed to get the required support from two-thirds of all members of the LegCo. The existing undemocratic procedures for electing the CE are to remain.

Finding the post-Umbrella Hong Kong more and more disobedient and confrontational, the CCR adjusts her strategy in ruling Hong Kong. The ultimate goal is to help the CE, who will never be democratically elected and must be under CCR's direction, find more political legitimacy. If this is successful, there will be no need to introduce genuine democracy in Hong Kong. The CCR worries that once democratic elections are fully implemented in Hong Kong, the control over the territory would be lost and Hong Kong could be used as a base of subversion to threaten the CCR's rule in Mainland China. This is the overriding concern of the CCR.

From the CCR's perspective, the past failures of CEs were caused by the constraints imposed by different powers of check and balance in the territory. If the CE could have a free hand to gain legitimacy through designing and implement policies to improve the livelihood of Hong Kong people, the voice demanding for democracy in Hong Kong will then be weakened. The uses of different tools of sharp power intensify in the post-Umbrella era to pressurise, neutralise, weaken or silence any constraining power that is still active in Hong Kong. The democratic camp, the Courts and the civil society are the principal targets of China's sharp power in Hong Kong.

Up to this point, Hong Kong is still the only place in the whole China under the direct rule of the CCR that can still maintain a significant level of political freedoms, the rule of law, democracy and human rights protection. However, the achievements of the past are now facing serious threats and are rapidly being eroded. In a recent interview, Professor Jerome Cohen, the renowned international expert on Chinese Law said, "Hong Kong is right now the battleground between the Chinese Communist dictatorship and Western liberal values and political institutions. It is a 'daily struggle', and the liberal side is losing." Though liberal values are not necessarily Western, Professor Cohen did rightly point out the present situation of Hong Kong. What is now happening in Hong Kong is not only significant to the people of Hong Kong but also to everyone in the world who embraces the same values of the rule of law, democracy and human rights.

This report is commissioned by Hong Kong Civil Hub. In this first report by Hong Kong Civil Hub, analyses by independent scholars, intellectuals and professionals in related fields are included illustrating how the CCR is exercising different tools of sharp power in different sectors in Hong Kong including law, civil society, election, media, education, religion and economics. We hope that the gained understanding of China's sharp power in Hong Kong will enable the international community to formulate an appropriate strategy to respond to the global advancement of authoritarianism by the CCR.

The Chinese authoritarian power may at this point seem to be invincible but as Liu Xiaobo, the deceased Nobel Peace Prize laureate, said, "Precisely it is because of such convictions and personal experience that I firmly believe that China's political prog-

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ress will not stop, and I, filled with optimism, look forward to the advent of a future free China. For there is no force that can put an end to the human quest for freedom, and China will, in the end, become a nation ruled by law, where human rights reign supreme.”

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# **Authoritarian Rule of Law** *in Hong Kong*<sup>1</sup>

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After the Umbrella Movement in 2014, the CCR has started the process to advance authoritarianism in Hong Kong. Ironically, the most critical tool of the CCR in promoting authoritarianism in Hong Kong is the rule of law which has also been the most crucial component of Hong Kong's semi-democratic system in the past years. However, the rule of law in the hands of the CCR is something entirely different from the rule of law that has been embraced by Hong Kong people for many years.

Making use of the contested nature of the rule of law of which there are many levels of understandings, the CCR adopts a very thin conception of the rule of law and promote it to be the official discourse of the rule of law in Hong Kong. Under a narrow understanding of this well-accepted constitutional principle, the powerholder needs only to conform to some general procedural requirements and implement decisions through among other things independent courts following some vaguely drafted legal rules. Any substantive legal provisions do not constrain the powerholder as all laws including the constitution can be given any meaning or even be changed as the powerholder likes. There is also no government institution including the court can impose a real constraint on the powerholder as all government institutions are subject to the highest legal authority of the powerholder. This understanding of the rule of law can also be referred to as the authoritarian rule of law.<sup>2</sup>

Even if this understanding of the rule of law does not constrain the powerholders and protect fundamental rights of citizens, it may still be able to provide a varying degree of legitimisation for the authority depending on the legal culture of the community. That is also the reason why authoritarian rulers would like to adopt the law as one of their tools of governing.

This thinnest conception is different from other much thicker understandings of the rule of law. Applying the teleological approach suggested by Martin Krygier,<sup>3</sup> the fundamental differences between the understandings of the rule of law can be clearly illustrated. The teleological approach asks first what the ultimate and overriding goal of law under the rule of law is before what the constituents of the rule of law are and how it may be achieved.

The rule of law that the CCR together with the CE and the HKSAR Government want to promote in Hong Kong puts maintaining social order as the primary function of law even at the costs of granting arbitrary powers to government officials and restricting fundamental rights of citizens disproportionately. By emphasising the importance of obedience to the law by all government officials and citizens, social order can be secured. Any person who refuses to obey the law will be considered to be damaging the rule of law.<sup>4</sup> If the authority of law is uncritically accepted by Hong Kong people, whatever its content is, the power of the CE sugar-coated by statute will be legitimised even

though she is not elected by all Hong Kong people directly.

However, many Hong Kong people embrace much thicker understandings of the rule of law. Maintenance of social order is only considered to be the foundation of more sophisticated and advanced goals of the law. Governmental powers must be constrained by law to prevent the powers from being exercised arbitrarily. An independent judiciary is a necessary but not sufficient condition to limit the powers of the government. Having an independent judiciary does not mean that the powers of the government could always be adequately constrained. Moreover, even if the powers of the government are being restricted, there is still no guarantee that the law can provide sufficient protection to citizens' rights. Therefore, law, in the end, must provide substantive protection to a range of citizens' rights.

According to the authoritarian rule of law, other goals of law are considered to be inferior to the need of maintaining social order through compliance and obedience to the law. The CCR plans to use the authoritarian rule of law to replace thicker understandings of the rule of law which are more generally shared by many Hong Kong people. Redefining the rule of law in Hong Kong as the authoritarian rule of law will help establish an authoritarian Hong Kong. The paradox is that Hong Kong's rule of law is now facing the most significant challenge from the advancement of authoritarianism by the CCR in the name of maintaining "the rule of law".

Many methods are now being used by the CCR to implement the authoritarian rule of law. Various incidents before and after Lam's replacement of C.Y. Leung as the CE can illustrate how the CCR together with the HKSAR Government is building up an authoritarian Hong Kong step by step through law.

### **Aggrandising the Constitution of the PRC**

There are many provisions of the Constitution of the PRC ("Constitution") that contradict with the Basic Law. That was the reason why the CCR created the principle of "One Country Two Systems" allowing Hong Kong to practice under the Basic Law political, legal, social and economic systems that are very different from the systems in the Mainland. Except Article 31 of the Constitution which authorises the National People's Congress to establish special administrative regions when necessary, the Basic Law avoids mentioning other provisions of the Constitution. Article 11 of the Basic Law only provides that the systems and policies practised in the HKSAR, including the social and economic systems, the method for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, should be based on the provisions of the Basic Law.

Since 2014, the CCR has started to emphasise the importance of the Constitution in the governance of Hong Kong in all official statements concerning Hong Kong. What has been accentuated are not the socialist provisions in the Constitution but the overriding interests of the nation including national sovereignty, national security, and development interests of the nation.<sup>5</sup> State.



## CHAPTER 1

### *Authoritarian Rule of Law in Hong Kong*

The provisions of the Constitution may not be directly enforceable in the Courts of Hong Kong. However, the CCR can reset the constitutional background of Hong Kong by aggrandising the Constitution in Hong Kong, paving the way for advancing the authoritarian rule of law in Hong Kong especially through the power of interpreting the Basic Law by the NPCSC.

#### **Normalizing the interpretation of the Basic Law by the NPCSC and the Oath-taking Incident**

The Basic Law is the constitutional foundation of the system of law in Hong Kong. Through the power to interpret the Basic Law enjoyed by the NPCSC, the CCR can give any meaning to the Basic Law whatever and whenever it desires, even if the meaning is something which the language of the legal instrument cannot bear, and such additional meanings are applied retrospectively.

The CCR used to think that the power of interpreting the Basic Law should only be used in exceptional circumstance as any such use would weaken the judicial authority in Hong Kong. However, now it is more prepared to use this convenient and powerful constitutional tool. Once a legal basis can be established for a controversial political decision through specific formal and authoritative decision-making procedures, many people in Hong Kong will accept its legitimacy. Not many people seem to know or care too much about the particular source of the legal intervention, the integrity of the legal procedures in generating the legal justification, or whether the legal justification is itself liberal or equitable. With this new insight, the CCR will normalise the use of the interpretation process to provide constitutional and legal supports for controversial political decisions.

Even if constitutional and legal disputes could have been resolved in judicial proceedings in Hong Kong, the CCR can issue an interpretation of the Basic Law before the judge in Hong Kong gives his ruling. This is a dangerous encroachment on the judicial independence of Hong Kong. It indicates that the CCR does not trust Hong Kong judges. There is no respect for Hong Kong's judicial autonomy. Previous worries that controversial political decisions would be challenged in the courts of Hong Kong may be reduced. Even though the NPCSC's understanding of the concept of interpretation and the interpretations given by the NPCSC might go against the common law approach, the Hong Kong Courts are found to have accepted the authority of the interpretations of the NPCSC unquestionably. It appears that Hong Kong judges do not dare to confront the sovereign power of the CCR and seem to be entirely powerless to defend their understanding of the rule of law in front of their sovereign master who holds a very different understanding of the rule of law. An excellent example to illustrate this measure of the authoritarian rule of law with Hong Kong characteristics is the oath-taking incident.

Article 104 of the Basic Law provides that members of the LegCo when assuming office must, under the law, swear to uphold the Basic Law and swear allegiance to the HKSAR. In past sessions, several legislators from the opposition camp had used irregular swearing-in methods in the oath-taking ceremonies to express their political opinions against the HKSAR Government and the CCR. Attire or props were used

while the official oath was being read. Words or slogans were added before or after the official oath was being read. Even if the oath-taking might be considered to be invalid, they were always allowed to re-take the oath.

After the elections to the LegCo in September 2016, several new legislators from the “localist” camp, the more radical wing of Hong Kong’s opposition, were elected. Two of them, Sixtus Leung and Wai-ching Yau, were alleged to have used derogatory acts or words to express their separatist stance while they swore their oaths. Leung’s and Yau’s oaths were decided to be invalid but were allowed to retake the oath in the next session by the President of the LegCo. The CE and the Secretary for Justice commenced legal proceedings to obtain declarations that the invalid oaths had disqualified Leung and Yau from assuming office before they had the chance to swear for the second time. The NPCSC issued an interpretation of Article 104 (“Interpretation”) just a few days before the Court of First Instance gave the ruling.

The Interpretation has in effect amended Article 104. It does not merely clarify the meaning of the constitutional provision. According to the Interpretation, an oath taker must take the oath prescribed by laws accurately, completely, solemnly and sincerely. Her failure to do so would be considered to be declining to take the oath. If an oath taker is deemed to have refused to take the oath, she will be disqualified from assuming the public office. The NPCSC added an arrangement that can hardly be found from that the legal text. If the oath first taken is decided to be invalid, the oath-taker cannot be given another opportunity to retake the oath-taking.

All levels of courts of the Hong Kong including the Court of Final Appeal (“CFA”) accepted the constitutional authority of the Interpretation and Leung and Yau were successfully disqualified. Four other legislators from the moderate wing of the opposition camp were also disqualified in subsequent legal proceedings initiated by the CE and the Secretary for Justice on the basis that they failed to take the oath accurately, completely, solemnly and sincerely following the Interpretation.

### **Issuing decision on compatibility with the Basic Law and the Co-location Arrangement**

Even though this is not a power explicitly mentioned in the Basic Law, the NPCSC has developed a new constitutional tool which can be considered an extension of its interpretation power. Foreseeing that there may be a legal challenge on a measure to implement to the authoritarian rule of law, the NPCSC has learnt to act pre-emptively by issuing a decision to confirm that the measure is compatible with the Constitution and the Basic Law. In case the action is still being legally challenged in the future, the NPCSC can give an Interpretation to grant constitutional status for the measure in question. As everyone can foresee that the NPCSC will do so, it is hoped that such people who want to challenge the measure would be scared off. An example is a decision by the NPCSC confirming the constitutionality of the co-location arrangement of the high-speed rail between Hong Kong and Guangzhou.

In 2010, the HKSAR Government pushed through the LegCo a controversial project getting funding support to construct a high-speed rail from Hong Kong to Guangzhou

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via Shenzhen to connect with the high-speed rail network on the Mainland. Due to the government over-spending, the project's budget increased from around 60 billion to close to 90 billion Hong Kong dollars. One major attraction of the high-speed rail is that there will be a co-location arrangement for passengers to complete clearance procedures of both Hong Kong and the Mainland at a single location in one go.

In 2017, the HKSAR Government put forward the proposal that the co-location arrangement will be conducted at the terminal at West Kowloon. A Mainland Port Area (MPA) will be set up at the West Kowloon terminal, situated at the heart of the territory, in which the whole body of Mainland laws will be applicable, and the Mainland authorities will exercise jurisdiction over all matters except those matters reserved for the HKSAR.

Many people question whether the co-location arrangement is compatible with the provisions of the Basic Law. Article 18 of the Basic Law provides that national laws shall not be applied in the HKSAR except for those relating to defence, foreign affairs and other matters outside the limits of the autonomy of the HKSAR listed in Annex III of the Basic Law. Article 19 of the Basic Law provides that the courts of the HKSAR shall have jurisdiction over all cases in the territory, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.

In December 2017, the NPCSC passed a decision confirming that the co-location arrangement is compatible with the Basic Law. It states that the co-location arrangement will not change the territorial boundaries of the HKSAR, affect the high degree of autonomy of the HKSAR and decrease the rights and freedoms enjoyed by Hong Kong residents. Also, it is beneficial to the economic development of Hong Kong. The decision was severely criticised by the Hong Kong Bar Association that all the provisions of the Basic Law referred by the decision in their plain reading cannot provide a firm legal basis for the co-location arrangement and explain why it would not be contravening Article 18 (Hong Kong Bar Association, 2017).

With the confirmation from the NPCSC, local legislation on the co-location arrangement is in the process of being enacted by the LegCo. It is likely that the law will be challenged in the courts of Hong Kong on its compatibility with the Basic Law. Even though the decision is not formally an interpretation by the NPSCP, one can foresee that the chance to successfully invalidate that piece of legislation through judicial review will be tiny. The NPCSC can merely pick any provision from the Basic Law and issue another interpretation to provide the constitutional support for the co-location arrangement. All constitutional disputes before the courts of Hong Kong will then be cleared.

Like the oath-taking incident, the co-location incident severely undermines the rule of law in Hong Kong. The CCR is now more and more prepared to use the law to justify any decision she wants to make as she can entirely control the constitutional process to interpret the Basic Law. Even if the reading given by the NPCSC is beyond the natural and plain meaning of the legal text and is not following the prescribed procedures of the Basic Law, no one could question its authority. As the Hong Kong Bar Association said, any act will be compatible with the Basic Law "just because the NPCSC says

so”. Law will be used in such a manipulative way when the CCR believes that some “good things” can be done.<sup>6</sup>

### **Adding national laws to Annex III of the Basic Law and the National Emblem Law**

According to Article 18 of the Basic Law, national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law. The NPCSC may add a national law to Annex III if it is related to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR as specified by the Basic Law. The laws listed in Annex III shall be applied locally by way of promulgation or legislation by the HKSAR.

All the laws now listed in Annex III are not politically controversial. Knowing that it has the ultimate power to determine whether a matter is within the scope of defence and foreign affairs or an issue outside the limits of the autonomy of the HKSAR, the CCR can easily convert the process under Article 18 and Annex III to become a back door to legislate for Hong Kong directly. Once a national law is said to be a matter concerning defence, foreign affairs or outside the limits of the autonomy of the HKSAR and is added to Annex III, the law will have to be implemented in Hong Kong even if the law’s real objective is to achieve the authoritarian rule of law in Hong Kong. An example is the enactment of the National Anthem Law.

The National People’s Congress passed the National Anthem Law (“NAL”) in September 2017, and the law was added to Annex III of the Basic Law by the NPCSC in November 2017. The local legislation to implement the NAL is now in the process of enactment. Several provisions in the NAL attract many concerns that the freedom of expression of Hong Kong people might be infringed

Article 6 of NAL provides that the national anthem must not be performed or sung in a manner harmful to the dignity of the national anthem. Article 7 states that those present when the national anthem is played and sung should stand and deport themselves respectfully and must not display any behaviour that is disrespectful to the national anthem. According to Article 15, whoever in a public venue deliberately alters the lyrics or the score of the national anthem or performs or sings the national anthem in a distorted or derogatory manner, or insults the national anthem in any other way, shall be issued with a warning or be detained for up to 15 days by public security departments. Where the act constitutes a criminal offence, the offender is subject to criminal prosecution in accordance with the law.

Many expressions in the NAL are not clearly defined. It is uncertain what kind of behaviours that will be covered by “manner harmful to the dignity of the national anthem,” “disrespectful to the national anthem,” “derogatory manner,” or “insulting the national anthem.” If the local legislation were to adopt the expressions from the Chinese legislation directly, it might infringe the right to freedom of expression of Hong Kong people. The legal provisions might not be able to satisfy the constitutional requirements on limiting the right because they are so uncertain that it cannot be “prescribed by law.” In effect, the NAL can silence many people in Hong Kong from

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expressing their legitimate antagonism against the CCR.

Even if one may want to challenge the constitutionality of the local legislation implementing NAL, the courts of Hong Kong may be questioned whether they have the jurisdiction to review its constitutionality. This is still an unresolved constitutional question. If the courts of Hong Kong in the future conclude that they lack the constitutional jurisdiction to review a piece of local legislation implementing an applicable national law under Annex III of the Basic Law, then the CCR may have a legal backdoor to disproportionately limit fundamental rights of Hong Kong people. This may compromise the protection that the rule of law can provide to Hong Kong people.

#### **Acting through the HKSAR Government by enforcing existing laws and Disqualification of Candidates by returning officers**

The CCR now has the full cooperation of the Lam's Administration. The spirit of the authoritarian rule of law is to utilise every possible room provided by the legal text to establish the legal authorisation for a measure of authoritarianism. In doing so, the meaning of the legal text may be extended or twisted arbitrarily. Legal procedures may ignore any requirement of procedural fairness. Even if officials exercising the legal power to fulfil an authoritarian task may have to face legal challenges in the future, with the authority to interpret the Basic Law as backup, the CCR can easily pick an article from the Basic Law and issue an interpretation of that article to provide the constitutional basis for the authoritarian measure. An example is the disqualification of candidates by returning officers on the ground that the candidates were not genuinely upholding the Basic Law.

After the successful disqualification of elected Legislative Councillors, the wave of disqualification extends to cover undesirable candidates. Section 40 of the Legislative Council Ordinance provides that for a person to be validly nominated as a candidate in the election of a constituency of the LegCo, she must sign a declaration to the effect that the person will uphold the Basic Law and pledge allegiance to the HKSAR ("Declaration").

Section 42A of the Legislative Council Ordinance authorises the returning officer to decide whether a person is validly nominated as a candidate, but the relevant provisions of the Legislative Council Ordinance had only been used by returning officers in the past to verify whether the Declaration included in the nomination form was adequately signed.

Even though there is no express provision, returning officers in the elections of the LegCo since 2016 have exercised the above power to determine whether a nominee has a genuine and truthful intention to uphold the Basic Law. The nominations of several nominees were declared to be invalid on the basis that they had expressed opinions supporting the independence of Hong Kong. In at least one case, a nominee had made an open statement that he no longer supported the stance of independence of Hong Kong, but his nomination was still declared to be invalid. The returning officer's reason was that she was not satisfied that the nominee had genuinely changed his stance on the independence of Hong Kong.



The “red-line” continues to be redrawn. In the recent by-election of the LegCo in March 2018, the nomination of a nominee supporting the right of Hong Kong people to democratically decide Hong Kong’s future was also declared to be invalid. This is also considered to be not upholding the Basic Law.

“To uphold the Basic Law” is not defined in the Basic Law and the Interpretation on oath-taking. However, since the election of the LegCo in 2016, all persons who want to be nominated as a candidate must also sign a confirmation form indicating that they understand that to uphold the Basic Law means to uphold the Basic Law including Article 1, 12 and 159(4).

Article 1 provides that the HKSAR is an inalienable part of the People’s Republic of China (PRC). According to Article 12, the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government. Article 159(4) states that no amendment to the Basic Law shall contravene the established basic policies of the PRC regarding Hong Kong.

It is likely that the returning officer will treat all opinions that deny, challenge, question or even suggest an alternative view to HKSAR’s status as an inalienable part of China to be not upholding the Basic Law. However, no one could know what exactly would be disallowed until the returning officer makes her decision. In another word, the returning officer is now exercising an arbitrary power with no clear standard to limit the political rights of Hong Kong people to stand in an election.

Unfortunately, a decision of the Court of First Instance confirmed that the returning officer does have such power and the judge relied very much on the Interpretation on the oath-taking. The judge only required the returning officer to satisfy specific requirements on procedural fairness in exercising power. Higher courts may overturn this decision in the future, but until then, the returning officer has the legal power to disqualify potential candidates according to uncertain and moving standards.

The CCR can now act through public servants in the HKSAR Government and achieve the objective of the Decision that triggered the outbreak of the Umbrella Movement via another doorway. Undesirable persons can now be easily screened out and do not have the chance to stand in an election. One can foresee that the same power will be used in the elections of the CE and even the District Councils in the future unless the courts of Hong Kong can set things right before the elections.

### **Political Prosecution and Review of the punishment of young protesters**

According to Article 63 of the Basic Law, the Department of Justice of the HKSAR Government controls criminal prosecutions and is free from any interference. The Secretary for Justice enjoys independent prosecutorial power as the Attorney General in a common law system. Now the whole administration of the HKSAR is under the direction of the CCR, and there is no difference to the prosecutorial power. It is now being used to serve political purposes, and there are many examples of political prosecution in the past few years. Owing to limitation of space, only one case is reported here, i.e. the review of the punishment of young protesters.



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At the beginning of the Umbrella Movement, three student leaders, Joshua Wong, Nathan Law and Alex Chow were involved in clashes at the government headquarters at Admiralty. They were found guilty of inciting others to take part in an unlawful assembly. The penalties of Law and Wong at the first trial were community service, and Chow was given a suspended jail term. After they had served their sentences, the Secretary for Justice applied to the Court of Appeal to review the sentencing, and they were jailed for six to eight months from a new set of sentencing guidelines developed by the Court of Appeal concerning cases disturbing public order. The new guidelines were developed by the Court of Appeal in light of the situations after the Umbrella Movement as there more and more clashes between police and protesters involving violence.

A group of international legal experts criticised the decision of the Court of Appeal that it was outrageously unjust because the three student leaders had already served their sentences. The decision amounted to imposing new punishments on Wong and Law, who had already completed their sentences of community service and may contravene the principle of double jeopardy that no one shall be punished again for the same offence.<sup>7</sup> The penalties were also considered to be too severe.

Though the Court of Appeal decided to impose more substantial penalties, the decision to initiate the process to review the punishment was made by the Secretary for Justice. There may not be hard evidence supporting this claim, but it will not be unreasonable to suspect that the Secretary for Justice was politically motivated to make such a decision to fulfil a task assigned by the CCR.

However, the decision of the Court of Appeal reveals something that is even more worrying, which is the attitude of some of the judges in Hong Kong concerning the ultimate goal of the law. Justice Wally Yeung, Vice-President of the Court of Appeal, said in the judgement: “In recent years, an unhealthy wind has been blowing in Hong Kong. On the pretext of pursuing their ideals or freely exercising their rights conferred by law, some people have acted wantonly in an unlawful manner. Certain people, including individuals of learning, advocate ‘achieving justice by violating the law’ and, under this slogan, they encourage others to break the law. These people openly flout the law. Not only do they refuse to admit their lawbreaking activities are wrong, but they even go as far as regarding such activities as a source of honour and pride. It is unfortunate that such arrogant and conceited ways of thinking have influenced some young people and have caused them to engage as they please in activities that are damaging the public order and disruptive of the peace at assemblies, processions or demonstrations.” The Court of Appeal also did not give any recognition to the civil disobedience motivation of the young protesters.

Fortunately, the judges of the CFA in their final judgement of the case disapproved the approach of Yeung. They disagreed that it is not a proper basis for sentencing since it ignores the culpability of the individual accused and instead seeks to attribute the culpability of other persons to them. Also, they ruled that the new sentencing guideline adopted by the Court of Appeal cannot be applied retrospectively to this case. The original penalties of the three young protesters were reinstated. Unlike the Court of Appeal, the CFA makes it very clear that the court must consider civil disobedience motivation as a mitigating factor in determining the penalty of an accused. Civil dis-

obedience is understood to be a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.

As reflected from the judgement of the Court of Appeal in this case, some judges in Hong Kong see maintaining social order as overwhelmingly important. Their understanding of the rule of law seems to be not too different from the authoritarian rule of law so asserted by the CCR and the HKSAR government. If more and more judges in Hong Kong embrace this very thin understanding of the rule of law, one cannot expect law and the rule of law in Hong Kong will be able to constrain powers of the authorities effectively and protect fundamental rights of citizens adequately.

### **Clearing the obstruction in the LegCo and the Amendment of the Rules of Procedure of the LegCo**

The above measures to disqualify elected LegCo members from the opposition camp have successfully further weakened the opposition camp. Even though the pro-Beijing camp is always the majority of the LegCo, the opposition camp can still use various rooms allowable by the Rules of Procedure (ROP) of the LegCo like filibustering to obstruct or delay controversial decisions of the HKSAR Government in the past. Now the pro-Beijing camp holds even the special majority needed to amend the ROP of the LegCo. The rules were changed, and all allowable rooms in the legislative chamber to withstand the encroachment of the authoritarian regime by the opposition camp have in effect been removed.

More manipulation of the ROP by the pro-Beijing camp is underway. As the pro-Beijing camp have the majority in the LegCo, the President of the LegCo and almost all chairpersons of committees of the LegCo are from the pro-Beijing camp. Rule 45 of the ROP of the LegCo authorises the President of the LegCo and any chairman of a committee of the LegCo to make the final decision on “point of order.” It should be a limited power and should only cover matters related with the observance of the rules of order during the meetings of the LegCo and its committees. Following the spirit of the authoritarian rule of law, the pro-Beijing camp wants to extend the scope of this power and assert that the President of the LegCo enjoys the power to make final decisions on all matters concerning the business of the LegCo. No debate is allowed on all final decisions of the President of the LegCo.

It would be tough to challenge a decision of the President of the LegCo through the process of judicial review as the CFA has already ruled that the court will not interfere with the internal processes of the LegCo. As a result, the proceedings of the LegCo are now entirely dominated by the pro-Beijing camp and the opposition camp can hardly use the processes in the legislative chamber to defend the thicker understandings of the rule of law.

### **Making new laws through the HKSAR Government and Article 23 Legislation**

One can foresee that after removing all obstacles in the legislative chamber, the HK-

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SAR Government will soon make new laws needed for further authoritarianisation in Hong Kong. The most important one must be the national security law under Article 23 of the Basic Law which provides that the HKSAR must enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government.

The last exercise of legislation was withdrawn in 2003 after more than half a million people demonstrated in the street against the legislation. Without the national security law, the CCR finds Hong Kong to be still an insecure place as Hong Kong may be used as a backdoor for anti-CCR forces to infiltrate into the authoritarian regime in the Mainland. For the past years, the CCR has been looking for opportunities to restart the legislative process but failed. The well-planned actions to authoritarianise Hong Kong through advancing the authoritarian rule of law aim to pave the way for this final action.

One can also foresee that the Article 23 legislation to be reintroduced may not be the same as the one being shelved. Some people from the pro-Beijing camp have expressed that the last bill was a toothless tiger as it cannot be used to prohibit any speech that merely advocates for the independence of Hong Kong without inciting people to commit an act of violence or other serious criminal act.

As the CCR is advancing authoritarianism in Hong Kong, the political red line is being drawn continuously. The national security law first must be able to disallow speeches that advocate for the independence of Hong Kong. Then, speeches supporting self-determination by Hong Kong people to decide Hong Kong's political future are to be banned too. Now, merely raising the possibility of considering the option of independence of Hong Kong if a democratic constitutional order were to be established to replace the collapsed authoritarian rule in the Mainland is also a kind of prohibited speech. It is likely that the political red line will be redrawn again at any time in the future depending on the political needs of the CCR. With the full cooperation of the CE, the HKSAR Government and the LegCo and gaining justification from the authoritarian rule of law, new laws to serve the political purpose would be smoothly made by the HKSAR in the future.

### NOTES

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# **Contraction of Civil Society**

## *under China's Sharp Power*

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This chapter will discuss the contraction of civil society in Hong Kong regarding increasing control over freedom of association and assembly. The section will first introduce the Chinese Communist Regime (“CCR”)’s current strategy of “graduated control” over NGOs in China and the tendency in cutting their overseas linkages. It will then explain the trajectory of civil society development in Hong Kong from a comparative perspective and the challenges it encounters. Readers may find similarities in the way the authorities exert control, overt and covert, over civil society in Mainland China and Hong Kong. There are two explanations for these similarities: either Hong Kong is deliberately moving back toward an authoritarian regime or the CCR has given direct instructions to the HKSAR government in suppressing civil rights.

### **Graduated Control and Delinking Chinese Civil Society from the West**

Civil society is a social sphere independent of state and market where citizens interact, communicate and organise collective actions in pursuit of the public good. This independent sector began to develop in China in the late 19th Century when chambers of commerce, trade associations, charity organisations, intellectual societies, and workers unions were established to cater for various social needs with a backdrop of the waning of state power. These groups, however, were either suppressed or replaced by surrogate people’s organisations after the CCR took control in 1949.

Only after the liberalisation in the 1980s under Deng’s economic reforms that civic space for intellectual exchange such as salons in universities began to develop. After the crackdown on the pro-democracy movement in 1989, however, the authorities decided to tighten the grip by making a very restrictive law for the registration and management of social organisations that made NGOs almost impossible to attain legal status in China. Only GONGOs (government-organised non-governmental organisations) or groups with close ties to the authorities such as trade associations or academic societies related to economic development were allowed to register.

Notwithstanding these restrictions, number of NGOs in education, health, poverty alleviation, environment, women, elderly and children continued to grow and made their contributions in a grey area. In the beginning, the regime was ambivalent about this emerging social sector. On the one hand, they served as a supplement to the state by providing services to neglected needs. On the other hand, the regime was worried if this independent sector might turn into a formidable political force threatening the regime. The CCR finally developed a strate-



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gy of “graduated control”, i.e., differential treatments to different kinds of NGOs.<sup>1</sup>

In a nutshell, groups with different business nature (service, advocacy, political), sizes, and funding sources will be dealt with by different strategies (co-optation, containment and crackdown). For example, grassroots service groups at community level easily monitored by party organs could be exempted from the stringent registration requirements and eligible to be subcontracted by the state. Most advocacy groups and groups serving sensitive population such as migrant workers, sex workers and people living with HIV/AIDS are contained in a grey area without legal status. Human rights groups promoting democracy are cracked down ruthlessly.

When Xi Jinping became the paramount leader in 2012, an internal document was released to prohibit discussion of seven ideas in the society including civil society, constitutional politics and independent judiciary. In 2016, two new laws related to civil society were made and implemented in 2017. The Charity Law was seen as a liberalisation move by simplifying the registration procedures for the charity groups, strictly defined as service groups for needs recognised by the state and allowing them to solicit donations from the public. At the same time, many labour groups, advocacy groups (such as for women and chronic patients) and human rights lawyers are pushed out from the grey area and subjected to harassment and arrest. The third sector, constituted by non-profit organisations, is expanding but civil society, an independent social sector embedded in the ideas of civil rights, is shrinking.

Moreover, the second new law overseeing overseas NGOs in China has a clear intention of weakening the linkage of Chinese NGOs with international NGOs and foundations. The government unit in charge of this matter was changed from Civil Affairs authority to Police. Overseas NGOs including those from Hong Kong and Taiwan are subjected to stringent registration requirements. Their collaborations with and funding to local NGOs are required to report to the police. Up to now, only around 400 overseas NGOs out of estimated 7,000 are successfully registered. At the same time, there has been a phenomenal growth of local philanthropic foundations such as private foundations supported by business enterprises. Together with public funding of NGOs through sub-contracting, these local foundations will eventually reduce the impacts of foreign financing along with its ideological influence (e.g. emphasis on public participation) to Chinese NGOs.

### **Hong Kong Civil Society from a Comparative Perspective**

As early as in mid 19<sup>th</sup> Century when Hong Kong became a British colony, resident (Kaifong) associations and business organisations already played an essential role in promoting mutual assistance and charity in the community. Tung Wah Group was established in 1872 to provide free medicine and funeral service to the poor and needy. The massive influx of refugees from China starting from WWII to the 1960s was responded by a phenomenal growth of local and international charity organisations. Advocacy groups or pressure groups and social movements emerged in the 1970s. Besides some patriotic movements organised by university students, large-scale social actions were launched by trade unions such as Professional Teachers' Union and pressure groups such as Christian Industrial Council, and Soci-

ety of Community Organizations to fight for better protection of the underdogs.

The colonial government was anxious about this development and established a clandestine Standing Committee on Pressure Groups to monitor their activities. Regardless of stringent controls on public assemblies through Public Order Ordinance, more pressure groups continued to develop in the 1980s, and they organised waves of protests to urge for better housing and health service, and stronger control over public transports and utility fees. When Hong Kong future became a burning issue in the 1980s, political groups such as Hong Kong Observers, Hong Kong Affairs Society and Meeting Point emerged and played an essential role in advocating political reforms to prepare for a “democratic reunion” of Hong Kong to China. An alliance of these pressure groups and political groups was established in the mid-1980s to urge the colonial government to implement direct election in the Legislative Council (“Legco”) in 1988. In 1991, the first pro-democracy party was formed by leaders of these pressure groups and political groups in response to the first direct election in the Legco.

After the handover, more advocacy groups and political groups continued to play an essential role in agenda setting and challenging public policy. One of the “combat zones” was in the area of community and heritage conservation such as the protest against the re-development of Wanchai and the demolishment of Star Ferry Pier and Queen’s Pier. These struggles demonstrated a post-materialistic concern of the new generation against single-minded economic development. The second combat zone was around civil and political rights exemplified by the massive rally against the enactment of National Security Law according to Article 23 of the Basic Law in 2003 and the fight for universal suffrage afterwards.

According to the *CIVICUS Civil Society Index Report (2006)*, Hong Kong civil society could be characterised as “vibrant but loosely organised.”<sup>2</sup> The development was at the medium level in the global scale (1.3 out of 3 in structure, 1.6 out of 3 in the environment, 2.0 out of 3 in values and 1.9 out of 3 in impact). Its strengths lied in its enthusiasm in advocating ideas and values, ability to shape public agenda and challenge public policy, and robustness in responding to societal needs and providing services.

Its significant weaknesses included a low level of persistent donation and volunteering; inadequate number of federations or umbrella organisations representing individual NGOs, and support organisations such as training institutes and foundations; limited dialogue with the government and erratic participation of NGOs in policy-making. Regardless of these shortcomings, Hong Kong civil society was much stronger than its counterpart in Mainland China (1.0 out of 3 in structure, 1.2 out of 3 in the environment, 1.8 out of 3 in values and 1.5 out of 3 in impact) according to the same study. Many NGOs in China also saw Hong Kong civil society as a role model.

The change of China’s policy towards Hong Kong since 2003 by reiterating the priority of One Country over Two Systems and the central government’s “overall jurisdiction” over Hong Kong is consequential to the development of civil society in Hong Kong. In *the Global Philanthropy Environment Index (2018)* released by the Lilly Family School of Philanthropy at Indiana University, though

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Hong Kong received a very decent score of 4.22 out of 5 (China: 2.75 out of 5) representing a position in the top 30% of the world, it also showed a risk of decline when reading carefully into individual dimensions of the score.<sup>3</sup> Hong Kong received a score of 4.83 on “ease of operating philanthropic organisations” without any government intervention in their internal affairs and means of communication. It also received a score of 4.25 regarding tax incentive for charitable giving.

Regarding the legal framework for cross-border philanthropy, Hong Kong received an excellent score of 5 due to its minimal restrictions in receiving and sending overseas donations. The score, however, dropped dramatically to 3 in the dimension of the political environment. It is found that public policies and practices in Hong Kong are favourable for philanthropic organisations working in education, social service and health but the government discourages public to donate money to human rights groups or similar organisations. These groups find it difficult to register, opening a bank account and receive tax incentive in donations. The following sector will elaborate more on the hurdles these political groups encounter when exercising their civil rights concerning freedom of association, assembly and demonstration.

### **Contraction of Civil Rights regarding Freedom of Association and Assembly**

#### ***Freedom of Association under Threat***

As reported in the *Global Philanthropy Environment Index (2018)*, there is no comprehensive ordinance or statute such as Charity Law that applies to NGOs in Hong Kong. They are regulated mainly by Companies Ordinance, the Societies Ordinance, and the Registered Trustees Incorporation. An NGO can be formed as a society, a company limited by guarantee, a trust, or a statutory body established under a specific ordinance. The *CIVICUS Civil Society Index Report (2006)* also reported that the registration process to be quick, simple, inexpensive, fairly applied and consistent. It is only until recently that some political groups encountered problems in registration as well as for opening a bank account.

In 2013, Occupy Central with Peace and Love (“OCLP”), a social movement organisation fighting for universal suffrage in Hong Kong, was rejected by the Companies Registry when applying for registration as a company limited by guarantee. The reason given by the authorities was that the civil disobedience action (occupation) to be taken by the organisation was illegal. OCLP maintained that the purpose of the organisation was to strive for democracy while civil disobedience was only one of the possible strategies considered by the organisation. They also pointed out that groups such as Green Peace and League of Social Democrats were allowed to register even if they occasionally employed civil obedience actions to attain their goals. In 2016, Demosisto, a political group established by social activist Joshua Wong, Nathan Law, Agnes Chow and others, was repeatedly delayed by the Companies Registry for the same application. Lacking a legal status, Demosisto was unable to open a bank account to receive donations from the public. Agnes Chow attempted to use her personal account to serve this purpose, but it was then closed down by Hang Sang Bank.

The Companies Registry later asked Demosisto to explain why the idea of self-determination and proposed referendum (for Hong Kong future) would not be contrary to the provision of the Basic Law. They replied that the concept of self-determination refers to the discussion regarding the status of Hong Kong after 2047. By then, the provisions of the Basic Law may be subject to change. Hence any advocacy of self-determination regarding the status of Hong Kong should not be regarded as contrary to any provision of the Basic Law stipulating PRC's sovereignty over Hong Kong. Regardless of these objections, on January 2018, the Companies Registry formally declined their application.

In July 2018, the authorities vowed to ban the pro-independence Hong Kong National Party. A letter addressed to the party chair Andy Chan said security officials believed that the party should be shut down "in the interests of national security or public safety, public order or the protection of the rights and freedoms of others."<sup>4</sup> Secretary for Security John Lee said that according to Society Ordinance if the party was banned, anyone who attends meetings or gives money to the group could be punished with a fine of HKD\$50,000 (US\$6,400) and two years in jail.

This unprecedented move was criticised as a blatant infringement on freedom of association protected by the Basic Law. Yuk-kai Law, Executive Director of Hong Kong Human Rights Watch, argued that this right should not be taken away by merely referring to a vague idea of "national security." He cited the "Siracusa Principles" (article 29) that national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force. He also referred to the Johannesburg Principles that no person may be punished on national security grounds for disclosure of information if the disclosure does not harm and is not likely to harm a legitimate national security interest. In a nutshell, the peaceful expression of the pro-independence idea should not be published according to the principles enshrined by these international treaties.<sup>5</sup>

### ***Freedom of Assembly at Risk***

The freedom of assembly and demonstrations in Hong Kong is constrained by the Public Order Ordinance, inherited from the colonial period. The Ordinance stipulates that the organisers of any protest over 30 people, or assemblies of over 50 participants, have to apply for a "letter of no objection" ("LONO") from the police. Public assemblies without LONO is liable to prosecution as "unauthorised" or "unlawful assembly" depending on whether the social order has been disturbed. This practice has been warned as in breach of the ICCPR. The UN Human Rights Committee report in 2013 stated, 'the application in practice of certain terms contained in the Public Order Ordinance, among other things, "disorder in public places" or "unlawful assembly", which may facilitate excessive restriction to the Covenant rights.'<sup>6</sup>

Taking advantage of the restrictive Public Ordinance and other Common Law charges, the authorities have been prosecuting more protestors with more severe offences in these years. Fig. 1 shows the increasing number of people arrested and prosecuted after handover (1998-2016). Other than "unlawful assembly", charges including com-

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mon assault, assaulting police, criminal damage, public nuisance, “stopping the car on an express road”, public obstruction, “not staying in vehicle”, resisting police officer, and the like have been used to create a deterrent effect on protestors and organizers as these charges would usually bring heavier sentences if found guilty.<sup>7</sup> On November 19, 2018, nine organisers of the Umbrella Movement will face even more peculiar charges such as conspiracy, incitement, and incitement to incite public nuisance.



Sources: Nok-Hin Au and Ngok Ma (forthcoming in 2018)

If the prosecution is hard power, the authorities also exercise their sharp power to harass and bully people participating in political assemblies and demonstrations. It was particularly controversial how the authorities handle the annual July 1 Rally in 2018. The authorities first let a pro-Beijing group take up the Victoria Park football pitch, the traditional starting point of the pro-democracy march, to organise a carnival celebrating the reunion of Hong Kong with China. After fierce debates with the organiser of the march around the issue of the starting point, the police issued a warning that participants could potentially be arrested for unlawful assembly at the rally if they do not join at designated locations. Though the rally ended up peacefully without any arrest, the warning was seen as harassment to deter people from joining the protest.

Another sharp power tactic to suppress freedom of assembly is to harass participants or disrupt the proceeding of the political assembly through social groups or individuals indirectly funded by the authorities. Studies show that China's “united front work” in Hong Kong, mainly through CLO, has used different tactics including integration of pro-Beijing groups, co-optation of or collaboration with more independent outsiders, containment or denunciation of oppositional groups.<sup>8</sup> Since the Home Affairs Bureau of Hong Kong SAR Government covers a broad spectrum of policy areas, including civ-



ic education, youth policy, district and community relations, sports and recreation, and culture and arts, it has authority and resources to enhance this united front work through cultivating friendly groups and circumventing oppositional groups in different areas. It has been a long-standing practice that when the government needs community support in policy making or attacking its political enemies, associations such as children choirs or sports clubs unrelated to the issue may sign petitions or express their views in public hearings. Participants were also found receiving cash from organisers of events supporting the government or opposing the democracy movement such as the march against Occupying Central.<sup>9</sup> Physical assaults of pro-democracy protestors by triad members also happened during the Umbrella Movement. However, the most common tactic, however, is the disruption of the political assembly through verbal or even physical attacks of participants by some “patriotic groups” including Caring Hong Kong Power, Voice of Loving Hong Kong, Defend Hong Kong Campaign and others. More and more universities, schools, churches, community halls or even hotels are reluctant to provide space for holding political forums to avoid the chaos of this kind. The result is the contraction of space for exercising freedom of assembly.

### **China Factor**

In the 19<sup>th</sup> CCP National Congress held in 2017, Xi Jinping vowed to rule China in accordance with laws. The lack of protection of civil rights exemplified by the arrest of human rights lawyers indicated that China is not practising the “rule of law” but only “rule by law”. The “graduated control” of civil society in China demonstrates that laws such as the newly made Charity Law and Overseas NGO Law could be used to strengthen groups willing to serve as the state’s executive arm in service provision while containing or cracking down on independent groups critical to the status quo. A similar pattern is emerging in Hong Kong when the Public Order Ordinance, Society Ordinance and other draconian codes in Common Law have been manipulated by the administration to suppress civil rights. When laws are made without a popular mandate and could be arbitrarily interpreted by Beijing, independent judiciary itself cannot guarantee the rule of law. Without the rule of law, the foundation of civil society is fragile.



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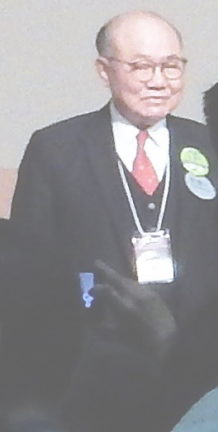
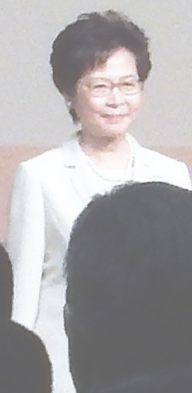
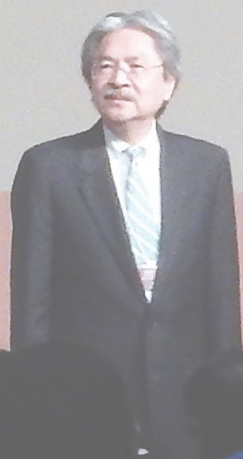
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# 區2017年行政長官選舉 Election of on of the People's Republic of China





# **Crippled Electoral System** *of Hong Kong*

Sang PU  
Political Commentator

The electoral system of Hong Kong is far from being genuinely democratic and is under increasingly immense pressure exerted by the mainland Chinese government led by the CCR at the detriment of the political rights of Hong Kong people.

## **Election System**

The Chief Executive (“CE”) of the Hong Kong Special Administrative Region (“HK-SAR”) having been chosen by fewer than 1,000 votes in an unfairly constituted election committee every five years (e.g., ex-CE C.Y. Leung got only 689 votes, and current CE Carrie Lam got only 777 votes) is the “leader” of more than seven million Hong Kong people. This is indeed far from the ultimate committed aim of the development of the political system of Hong Kong under the Basic Law of Hong Kong: the CE is to be elected by universal suffrage, upon nomination by a broadly representative nominating committee in accordance with democratic procedures (Basic Law Article 45), and all members of the Legislative Council (LegCo) are to be elected by universal suffrage (Basic Law Article 68). Following the timetable provided in the Basic Law, Hong Kong would eventually become a genuine democracy even if the scheduled time was being postponed for several times, on the condition that the provisions of the Basic Law are given its natural and logical meaning and are implemented.

The lights of hope had appeared to be on for more than a decade, until the time when the Standing Committee of the National People’s Congress (“NPCSC”), a legislative arm of the CCR, issued a decision on the election method of the CE on 31 August 2014 (“Decision”), and effectively killed the final hopes of many Hong Kong people for genuine universal suffrage. Exceptionally stringent requirements on the election method of the CE, intended to start from 2017, were laid down in the Decision. The number of members (1200), composition (the numbers of electors corresponding to different elected members can be substantially different) and formation (required to be same as the election committee for the previous CE) of the nominating committee (“NC”) are manifestly unfair. The NC can only nominate two to three candidates. More importantly, each candidate must have the endorsement of more than half of all members of the NC before he/she can be qualified for voting by all registered voters of Hong Kong.

This proposed arrangement effectively means that, as long as the Chinese Communist Regime (“CCR”) can continue to exert substantial control over the votes of more than half of all members of the NC (601), there will be no chance for Hong Kong people to have a genuine choice of who will be the CE of the HKSAR. In other words, while

the electorate would finally be able to cast a direct vote, the candidates themselves would be subject to prior screening and approval by the CCR. According to the Decision, nomination by citizens (for example 1% registered voters of Hong Kong) or nomination by political party/organisation is not allowed. The NPCSC Decision triggered widespread discontent in Hong Kong and ultimately gave rise to the Umbrella Revolution of 2014 which is a civil disobedience movement unprecedented in Hong Kong and well known internationally. The Umbrella Revolution regretfully failed in altering the NPCSC Decision. Although the NPCSC Decision was subsequently used as the basis for the HKSAR's political reform package introduced in LegCo in June 2015, such package was vetoed by LegCo (28:8) and as a legal consequence the original unfairly constituted election committee will continue to elect all subsequent CE's for an undefined time without any timetable for change.

In respect of LegCo, i.e. the legislature, it is a semi-democratically elected body comprising 70 members. 35 of whom are directly elected through five geographical constituencies (GCs) under the proportional representation system with the largest remainder method and Hare quota. The other 35 are either indirectly elected through trade-based functional constituencies (FCs) with limited electorates comprising only around 10% GCs electorate (30 out of 35), or directly elected by territory-wide voters while such candidates are nominated by only around 400 District Councillors as five District Council (Second) new FCs (5 out of 35).

Also, the 35 GCs and the 35 FCs are treated as two separate groups for vote counting purpose for any motion initiated by LegCo members, and such motion will be considered passed if and only if each of the two groups casts majority votes for such motion. Given that the CCR can effectively control around two-thirds of the 35 FCs which are by large narrowly constituted, there is no real chance to pass any motion initiated by LegCo members without the support by pro-Beijing members. Although the bill proposal right by any LegCo member has already been paralysed by Basic Law Article 74 which excludes public expenditures, political system and government operation from bill proposal right and subjects any bill proposal on government policies to CE's prior written approval.

In terms of current political reality, notwithstanding the fact that pro-democracy camp has continuously gained seamless territory-wide electorate support ever since the start of geographical elections in 1991 (around 55-60%), pro-democracy camp can only manage to win simple majority seats in GCs, and only minority seats in FCs, due to the unfair electoral system. As a result, pro-democracy LegCo members can veto bill or motion initiated by the HKSAR Government which requires a two-thirds majority at LegCo (which are very few), for example, they can veto any fake universal suffrage bill or motion proposed by the HKSAR Government. However, they will not have sufficient votes in hand to veto any bill or motion initiated by the HKSAR Government which requires a simple majority at the LegCo (which is the majority), like not being able to veto the Basic Law Article 23 National Security Bill, which may be re-proposed by the HKSAR Government to restrict freedom of expression, association and press of Hong Kong people in the very near future.

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Although the ultimate goal under the Basic Law is that all LegCo members are to be elected by universal suffrage (Basic Law Article 68), the NPCSC Decision of 2014 has unequivocally mentioned that no universal suffrage of LegCo will be allowed until and unless universal suffrage of CE is attained. This effectively postponed LegCo democratisation further down the road for an undefined period without any timetable for change.

#### **Divide and Rule Strategy**

The proportionality representation system applicable to LegCo GCs, as well as the large electorate population in each GC, have encouraged division in the democratic camp and supported the divide and rule strategy of the CCR. Under the proportionality representation system, candidates are required to group themselves into teams, and voters are allowed to vote for only one team rather than for one individual candidate. Also, two principles form the heart of GCs electoral system: quotas and remainders. A quota is the number of votes divided by the number of seats available in each GC, and that is the number of votes a candidate needs to gain to get elected. According to the largest remainder method, if there are not enough candidates who have reached the quota to fill the available seats, another draw based on the remainder is held.

This system entails significant political consequences: decentralisation and radicalisation. Candidates who are worried about being marginalised are no longer interested in mainstream flagship pro-democracy political parties. They would prefer to form another political organisation for election purpose if mainstream pro-democracy parties refuse to place them at the top in their teams for election. As long as they have confidence in securing a certain percentage of all actual valid votes of a particular GC, they might have a much better chance to win a seat making use of the last remainder counting.

This can at least partially explain the reason why there is an increasing number of pro-democracy political parties in Hong Kong in the past decade. To distinguish themselves from the mainstream, more creative, sometimes more radical, political agenda and appeals have been put up for public choice. This encourages positive competition and self-reflection within the pro-democracy camp but also increases the difficulty in effectively mobilising pro-democracy camp and its supporters in a deliberated, concerted and organised manner and therefore opens up ample opportunities for China's sharp power regime to indirectly infiltrate into different pro-democracy parties and launch its divide and rule strategies.

As a remark, there has been a tendency that the CCR has been duplicating or attempting to replicate this divide and rule approach similar to other parts of the world. The extent of similarity depends on specific political system features, and this tendency is part of its China Dream "united front" initiative, examples would be the elections in Taiwan, Australia, Canada and even the United States.

This divide and rule strategy of China's sharp power regime is multifaceted, ever-changing and complicated. One of its well-known features is to plant people with-

in the pro-democracy camp and to mobilise them to spread radical and populist ideas and create internal conflicts and grievances, to segregate individual political parties and to diminish trust and bonding among pro-democracy supporters. The process started roughly in 2010. For example, a self-alleged social democrat has gradually begun to label himself as a localist, and along with his gradual transition he has entered into conflicts one after the other with moderate democrats, social democrats, radical democrats, and even with localists eventually. As a result, one political organisation was split into two, he then abandoned both organisations to form an alliance with others and ultimately conflicting with and creating grievances against all his allies.

This has left the radical, progressive and avant-garde wing of the pro-democracy camp divided and scattered in an irrecoverable manner and has created an unnecessary divide between moderate and radical camps. At least one of his keen young supporters was shocked and entered into prolonged psychological depression when he had been suddenly labelled as an enemy of the group and then sidelined as an outsider overnight for an unknown reason, quite similar to those having been purged during the Cultural Revolution of China.

Also, the CCR has adopted other subtler strategies to make full use of the differences between the moderate wing and the radical wing, between localist and pan-democratic camps, to weaken the democratic movement of Hong Kong. The rise of localism and pro-independence in Hong Kong since 2011 could be considered as a golden opportunity for the CCR to offer underground support to certain pro-independence advocates on the one hand. On the other, it is a chance to crush pro-independence voices, and more importantly, the overall freedom of speech and association of Hong Kong, especially when CY Leung was the CE of HKSAR (2012-2017).

This does not mean that the CCR planted all advocates and supporters of localism and pro-independence pursuits. On the contrary, the reality is that many of such supporters are honest, idealist, enlightened and forward-looking, especially when they could have expected the tendency of the downfall of the CCR within a few decades and the demise of One Country Two Systems. This just means that some agents of the CCR could appear to be radical localists who could have been planted into the anti-communist or pro-democracy political camp of Hong Kong in a deliberate and well-planned manner. They are meant to become advocates of localism and independence at all times but to produce critical effects at critical moments for the benefit of the CCR to weaken the overall local democratic movement of Hong Kong. It has been argued that the outbreak of Mongkok unrest in 2016 was a consequence of this provoke-and-persecute strategy of the CCR, but an independent and professional post-mortem investigation is yet to be concluded.

This being said, one well-adjudicated notorious example is as follows. Wing-kin Cheng was convicted in the District Court of Hong Kong in October 2016 after offering bribes and trying to convince five localists, including Youngspiration member Sixtus Leung, in 2015 to run in specified geographical constituencies (GCs)



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in District Court elections in a bid to divert votes from other candidates, such as pro-democracy politician Frederick Fung. None of them accepted the money. Cheng told the localists that the money came from Chinese businessmen who had “unlimited money, manpower and resources” to help localists to stand in the local elections. Cheng later told the court that a Chinese businessman surnamed Li was behind the plan. A witness said that Cheng had met Li and “other bosses” through layers of middlemen in Sheung Wan. Local newspaper Ming Pao reported that one of the middlemen was Gao Lingxiang, a former election campaigner of the CE at that time, CY Leung. At the time when Gao introduced Cheng to another middleman, Gao worked for a pro-Beijing organisation, whose patrons are Leung and Zhang Xiaoming of the China Liaison Office in Hong Kong. It has also been widely argued that the United Front Department of the CCR was at work during the Sheung Wan meeting as mentioned above.

This case demonstrates how the CCR adopted subtle and powerful strategies to divide and rule within the anti-communist and pro-democracy camp of Hong Kong. China Factor is clearly notable within Hong Kong elections and can be duplicated or even has been duplicated elsewhere in many other countries over the world.

#### **First-Stage Disqualification of Candidates by Returning Officers**

Candidates intending to run for the 2016 LegCo elections and the 2018 LegCo by-elections faced a new requirement: they were asked to sign a confirmation form indicating that they understand that to uphold the Basic Law means to uphold the Basic Law Articles 1, 12 and 159(4). In addition to the pre-existing requirement of signing a declaration, following Section 40 of the Legislative Council Ordinance, they are required to confirm in writing their intention to uphold the Basic Law and pledge allegiance to the HKSAR.

Article 1 of the Basic Law provides that the HKSAR is an inalienable part of the People’s Republic of China. According to Article 12 of the Basic Law, the HKSAR shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government. Article 159(4) of the Basic Law states that no amendment to the Basic Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong.

Such a confirmation form can be interpreted as a representation having been made by a candidate, and any alleged violation on or after the date of signature, regardless of whether he/she is elected or not, can be interpreted as a misrepresentation, which would be vulnerable to civil and criminal liabilities.

The worst part is yet to come. Section 42A of the Legislative Council Ordinance authorises the Returning Office to decide whether a person is validly nominated

as a candidate, but in the past, the relevant provisions of the Legislative Council Ordinance had only been used by District Electoral Officers, a.k.a. Returning Officers, to verify whether the Declaration included in the nomination form was adequately signed.

Even though there is no express provision, Returning Officers in the elections of the LegCo since 2016 have started to exercise their power to determine whether a nominee has a genuine and truthful intention to uphold the Basic Law. The nominations of several nominees were declared to be invalid on the basis that they had expressed opinions supporting the independence of Hong Kong. In at least one case, a nominee had made an open statement that he no longer supported the stance of independence of Hong Kong, but his nomination was still declared to be invalid. The reason given by the Returning Officer was that she was not satisfied that the nominee had genuinely changed his stance on the independence of Hong Kong. This gave rise to a genuine concern as to whether or not a once-upon-a-time pro-independence individual would be disqualified from being a candidate for elections for his/her entire life.

Further, in respect of 2018 LegCo by-elections, the nomination of one nominee was declared invalid, because she belongs to a political party/organisation which supports the right of Hong Kong people to democratically decide Hong Kong's future, not because of any of her past speech or conduct. She also had not been given any chance for providing an explanation, defence or rebuttal before the decision of the Returning Officer was laid down.

Overall, the authority of the Returning Officers, tasked to enforce this new ultra-legal requirement, has been questioned in light of the lack of procedural safeguards for due process and persuasive justification. This not only has led to a "pre-screening" of candidates on the basis of their perceived sincerity and propensity to uphold or, conversely, to violate the Basic Law, but also has signified that the so-called "red-line" under manipulation continues to be redrawn to cope with the then current political need. These developments are contrary to the guarantee outlined in Article 25 of the ICCPR (also incorporated by the Hong Kong Bill of Rights Ordinance) and give rise to establishing the legal authorisation for practising authoritarianism within the HKSAR.

Unfortunately, a decision of the Court of First Instance confirmed that the Returning Officer does have such power. The judge only required the Returning Officer to satisfy specific requirements on procedural fairness in exercising power. Higher courts may overturn this decision in the future, but until then, the Returning Officer has the legal authority to disqualify potential candidates according to uncertain and moving standards. It is likely that the Returning Officer will treat all opinions that deny, challenge, question or even suggest an alternative view to HKSAR's status as an inalienable part of China to be not upholding the Basic Law. However, no one could know what exactly would be disallowed until the Returning Officer makes his/her decision. In other words, the Returning Of-

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ficer is now exercising an arbitrary power with no clear standard to limit the political rights of Hong Kong people to stand in an election. Whether or not such an arbitrary power has been exercised by such a low-ranking administrative officer upon receipt of any top-down instruction or order from higher-level government officials or even from officials of the CCR has been widely speculated.

There is yet a genuine tendency to extend the above authoritarian electoral practice to go beyond LegCo elections, for example by applying the same practice to the forthcoming District Council elections of 2019 unprecedentedly. If this is the case, this could entail an inevitable political result in favour of the CCR unless the courts of Hong Kong can set things right before the elections.

Undesirable pro-democracy nominees will be selectively screened out and kept away from standing in all levels of political elections of the HKSAR, including the elections of the CE and the District Councillors.

### **Second-Stage Disqualification by Court due to Oath-Taking Irregularities**

Even if a nominee passes the hurdles of confirmation form and pre-screening by Returning Officers becomes a candidate and successfully gets elected, he/she will still be vulnerable of being disqualified unless he/she strictly follows NPCSC new requirement of oath-taking on top of Article 104 of the Basic Law.

Article 104 of the Basic Law provides that LegCo members when assuming office must, by law, swear to uphold the Basic Law and swear allegiance to the HKSAR. In past sessions, several legislators from the pro-democracy camp had used irregular swearing-in methods in the oath-taking ceremonies to express their political opinions against the HKSAR Government and the CCR. Attire or props were used while the official oath was being read. Words or slogans were added before or after the official oath was being read. Even if the oath-taking might be considered to be invalid, they were always allowed to re-take the oath.

After the elections to the LegCo in September 2016, several new legislators from the localist camp, the more radical political wing, were elected. Two of them, Sixtus Leung and Wai-ching Yau, allegedly used derogatory acts or words to express their separatist stance while they swore their oaths (i.e. pronouncing “China” as “Chi-na” which has been interpreted as resembling how imperialist Japan called China before the end of the Second World War, and saying “People’s Republic of China” as “People’s Refuxxking of Chi-na”). Leung’s and Yau’s oaths were decided to be invalid but were allowed to retake the oath in the next session by the President of the LegCo. The CE and the Secretary for Justice commenced legal proceedings to obtain declarations that the invalid oaths had disqualified Leung and Yau from assuming office before they had the chance to swear for the second time. At this critical moment, the NPCSC issued an interpretation of Article 104 of the Basic Law (“Interpretation”) just a few days before the Court of First In-

stance gave the ruling. The NPCSC Interpretation has in effect amended Article 104. It does not merely clarify the meaning of the constitutional provision.

According to the Interpretation, an oath taker must take the oath prescribed by laws accurately, completely, solemnly and sincerely. His/her failure to do so would be considered to be declining to take the oath. If an oath taker is taken to have declined to take the oath, he/she will be disqualified from assuming the public office. As a remark, this treatment is substantially different from how the UK parliament, for example, treats those elected Sinn Féin members who refused to pledge allegiance to the Queen, i.e. prohibition against participation in parliamentary meetings rather than outright disqualification of parliamentary membership. Further, the NPCSC added an arrangement that can hardly be found from that the legal text, i.e. if the oath first taken is decided to be invalid, the oath-taker cannot be given another opportunity to retake the oath. This new requirement is extraordinary, unreasonable, unprecedented and ungrounded under any existing Hong Kong ordinances and case law.

Besides, the NPCSC Interpretation subtly changed Article 104 of the Basic Law. Article 104 of the Basic Law requires elected LegCo members, high-level government officials and judges to pledge allegiance to the HKSAR, without mentioning pledging allegiance to the People's Republic of China, but Article 3 of the NPCSC Interpretation surprisingly requires elected LegCo members, high-level government officials and judges to pledge allegiance to the People's Republic of China and the HKSAR. This subtle change can no longer be logically regarded as an interpretation of Article 104 of the Basic Law but a fundamental ultra vires alteration thereof.

Regretfully all levels of courts of Hong Kong including the Court of Final Appeal ("CFA") accepted the constitutional authority of the NPCSC Interpretation and Leung and Yau were disqualified. This again indicates the limitation of the judiciary of Hong Kong to set things right for electoral matters. All levels of courts of Hong Kong also did not accept the counter-argument that the NPCSC Interpretation was promulgated after the irregularities of oath taking by LegCo members had taken place and that the NPCSC Interpretation should have no retroactive effect of application. The reasoning underlying the judgements of Hong Kong courts is that the NPCSC Interpretation should be deemed retroactively effective ever since 1 July 1997 at the same time when the Basic Law became effective. Though the NPCSC Interpretation is alleged as an interpretation, this position is unacceptable because the NPCSC Interpretation has created a new requirement which was unprecedented.

The worst was yet to come. Leung and Yau were asked by the LegCo to repay all monies they had received during their office till the date when they were disqualified. Also, they were sued for "unlawful assembly" for their attempted action to enter into the oath-taking assembly to do a proper oath taking, while Yau was subsequently imprisoned for four weeks.

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Four other legislators from the comparatively moderate wing of the pro-democracy camp were also disqualified in subsequent legal proceedings in 2017 initiated by the CE and the Secretary for Justice on the basis that they failed to take the oath accurately, completely, solemnly and sincerely in accordance with the Interpretation by, for example, adding words in oath statements, pronouncing “China” as “China?”, Reading the words one after the other very slowly and demonstrating other gestures or tools. The judicial system of Hong Kong was again proven helpless in securing their fundamental political rights.

The electorate’s right to participate in free and fair elections is, consequently, under threat from this use of the above mechanisms to disqualify elected members, supported by the NPCSC’s pre-emptive “interpretation” of the lawfulness of the measures adopted. A few more pro-democracy camp LegCo legislators had added words in their oath statements and demonstrated other gestures, in the same or similar manner as those four legislators mentioned above, but they have not been disqualified for an unknown reason. This subtly differential treatment by the CE and the Secretary for Justice might have continued to produce a chilling effect upon those elected LegCo legislators to an extent which is unlikely quantifiable or verifiable and to weaken the trust among pro-democracy camp members as part of the divide and rule strategy of the CCR.

In summary, the aforementioned two-stage disqualification of candidates and elected LegCo members has produced at least four material adverse effects. First, the LegCo is cleansed to make it under substantial control of the CCR. Second, leftist and more radical pro-democracy camp’s revenue streams are being cut off. Third, a chilling effect upon elected LegCo members is produced. Fourth, it kills hopes of the entire Hong Kong electorate. The overall strategy of the CCR and the HKSAR CE and its officials is similar to one peeling an onion. They would like to remove opposition voices one after the other, from pro-independence leftist to self-determination advocates, to radical or progressive pro-democracy supporters, and then to moderate pro-democracy members. This is similar to the notorious manner of how the German Nazi Party treated communist, union members, Catholics, Christians and Jews one after the other before and during the Second World War.

### **Redistricting Constituencies and Gerrymandering**

In respect of the actual elections, the HKSAR Government has announced its proposal to restrict GCs for the forthcoming 2019 District Council elections in July 2018, namely to redistrict 128 existing constituencies and to add 21 new constituencies. It has been widely alleged and argued that such restricting had given rise to possible gerrymandering to the detriment of pro-democracy camp, along with inaccurate calculation of population, opaque decision-making process, disruption of the integrity of local society boundaries by the HKSAR Government. For example, two populous Cheung Chau Island constituencies were



combined into one for an unknown reason without prior consultation. Besides, one traditional pro-democracy constituency with eleven blocks of the building has been proposed to carve out five of them to add to another constituency for an unknown reason without reasonable justification to segregate one entire local society into two unnecessarily. These proposed changes were argued as under calculated deliberations to undermine the supportive power of the pro-democracy camp against the pro-Beijing camp.

### **Planting Voters in Constituencies**

Hong Kong permanent residents need to first register themselves as voters before they are eligible to vote in all levels of elections. In LegCo and District Council elections, the CCR has very likely conducted detailed analysis and calculation of each constituency, and even each block of building, to assess the winning chance of its endorsed or supported candidates who run in such elections. Notoriously, there has been an organised and concerted effort to plant, i.e. register, voters into specific GCs to help specific pro-Beijing candidates to get across the margin in a calculated and organised manner. “One apartment, seven surnames, thirteen voters” within an apartment in West Kowloon were reported in 2011 District Council elections, while one of them was a CPPCC Standing Committee Member of a city in Guangdong Province of China.

This absurd phenomenon was not an isolated case but was quite widespread in other constituencies, and was due to voters having been planted into such constituency by an unknown dominant force. This irregularity should have been quickly discovered and rectified by reading and tracking the voter register. However, the Registration and Electoral Office of the HKSAR Government failed in delivering its relevant duties in this regard for unknown reason. Such irregularities have gone on unchecked in favour of pro-Beijing candidates and have substantially hampered the rule of law and the democratic movement of Hong Kong.

### **Luring and Mobilizing Voters**

Before declaring themselves as candidates, pro-Beijing to-be-candidates, when compared with pro-democracy ones, could have abundant monetary and human resources in launching local societal work and very expensive soft propaganda, likely flown down from the CCR in a discreet underground manner. Gifts, meals and entertainment have been offered to residents in a targeted constituency regularly over the years, and pro-democracy camp members who are weak in resources are inevitably at a comparative disadvantage to match and run in District Council and LegCo elections.

China Liaison Office of Hong Kong, CCR hub in Hong Kong, is often regarded as the powerhouse of all such funding and organisation in favour of its endorsed pro-Beijing individuals and political organisations. Ample resources, time and

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manpower, were put in to support specific pro-Beijing individuals to get elected. Under the context of the existing proportional representative system, such luring tactic could have yielded victories by mobilising vote directions at critical moments. Being worse, the HKSAR Government has also been an alleged accomplice. For example, it has been reported that the HKSAR Government has decreased social service levels within a specific constituency, e.g. a public estate, to give way to pro-Beijing funds and resources to “lend a helping hand” to the residents to lure votes and mobilise voters at critical moments, which is a manifestation of China’s sharp power

#### **Jeopardizing LegCo Rules of Procedure**

The Rules of Procedure of the LegCo of the HKSAR (“ROP”) are a set of written rules which governs how the LegCo conducts its daily business and sets out the standards of conduct and behaviour expected of a LegCo member, according to Article 75 of the Basic Law. The primary objective of the ROP is to ensure that LegCo members can have sufficient and reasonable opportunities to freely express their views, allegations, opinions, suggestions and criticism without fear and reservation. The rules help prevent the President of LegCo, the presidents of various LegCo committees, or any dominant political force within LegCo from having any supreme power to override the right to free expression and debate within LegCo of any single LegCo member. However, such procedural safeguard of the ROP was no longer genuinely respected by the dominant pro-Beijing political power and was eventually jeopardised. On 15 December 2017, as pro-democracy camp has already lost simple majority within GC due to vacancies of questionably disqualified LegCo members after the oath-taking incident mentioned above, the ROP was altered by the majority of LegCo members in both GC and FC within LegCo.

After such an alteration, the quorum of the Committee of the Whole Council of the LegCo has been reduced from 35 to 20 including the President, therefore reducing the chances for pro-democracy LegCo members, who are a minority in the LegCo, to adopt filibuster or head-counting procedural strategies to counteract against bills or motions which are profoundly detrimental to human rights and rule of law, including the Basic Law Article 23 national security legislation. More importantly, the President of the LegCo and the Committee of the Whole Council of LegCo has been granted unprecedented power to reject or consolidate motions initiated by any LegCo member, to order re-convening discontinued meeting at any time, to disapprove proposal of adjournment of the meeting, and to disapprove repetitive speeches. Besides, the quorum of any select committee to investigate controversies of public interest has been escalated from 20 to 35, therefore increasing the difficulty for pro-democracy LegCo members to form any select committee.

Overall, it has been argued that the alteration of ROP is against the underlying rationale behind Article 75 of the Basic Law and its constitutionality has been

called into question. This being said, after such alteration of ROP, until and unless it is rectified, LegCo function has been hampered and could be vulnerable to quasi-dictatorship, whether it is open-minded or close-minded, by the President of LegCo and the presidents of various committees of LegCo. China's sharp power, therefore, has extended its reach and influence into the legislature of Hong Kong.

### **Threat to Dismiss Hong Kong National Party**

As of now, Hong Kong has not passed any political parties act or bill to recognise any organisation as a political party and accordingly regulate it as such. Many alleged political parties in Hong Kong have chosen to register themselves as companies or societies in Hong Kong so that they could open bank accounts to manage funds. However, application by Demosistō, an organisation advocating self-determination by Hong Kong people, to register as a company was rejected by the Companies Registry. This absurd situation is alike for the Hong Kong National Party ("HKNP"), a small organisation advocating pro-independence ideas, and it has not been approved to be registered as a company or a society.

On 17 July 2018, Andy Chan, leader of the HKNP, was served in person by the Hong Kong Police with lengthy documents, which alleged that although HKNP is not a registered "society", it is still a "society" and has violated Section 8 of the Societies Ordinance, which prohibits any association of more than one individual which would cause danger to national security - this regulation can also be applied to unregistered "societies". Accordingly, any sponsor or facilitator of HKNP could be subject to up to 12-months imprisonment. Chan was given a few weeks to raise any opposing arguments, but in practice, such opposing arguments would be unlikely to alter such a planned and calculated decision by the HKSAR Government.

As neither Andy Chan nor HKNP has advocated any evident and imminent risk of violence against anybody in pursuit of their goals of Hong Kong independence, such an outcry by the HKSAR Government, backed up by the CCR and its party-controlled media, could be considered as groundless if the Hong Kong Bill of Rights Ordinance is rightfully relied upon to scrutinize and interpret Section 8 of the Societies Ordinance, which has been drafted in a broadly applicable manner.

Overall, this matter is not an issue as to whether or not Chan or HKNP can run in an election, nor a question as to whether or not the pro-independence ideal is agreeable or not. It instead triggers a concern as to whether or not the overall freedom of speech and association of Hong Kong, though being weakened over the years, would continue to exist. This concern could further extend to whether or not the Foreign Correspondents' Club ("FCC") of Hong Kong, comprising members and journalists from all over the world, which allowed Chan to make a speech on 14 August 2018 would be vulnerable to early termination of rental of its premises. The FCC may also be subject to claims as an accomplice of Chan and HKNP which are targets of Section 8 of the Societies Ordinance.

More importantly, if we follow the same line of thought of the HKSAR Government, virtually all pro-democracy political parties in Hong Kong could be one after the other labelled

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as unlawful according to Section 8 of the Societies Ordinance. In the worst-case scenario, even the Hong Kong Alliance in Support of Patriotic Democratic Movements in China which persistently opposes one-party dictatorship rule by the CCR could be deemed as threatening national security and therefore could be at risk of being ordered for dismissal same as the aforementioned proposed dismissal of HKNP. As this kind of reasoning is substantially similar to how the CCR closes down independent NGO's in mainland China, this will signify the actual end of the One Country Two Systems and will inevitably affect how foreign countries would reconsider their relationship with the CCR and the status of Hong Kong.





官場性事規則

鄧小平時代

新時代

臉譜

外參

動向

內幕

明鏡

新華

新紀元

十八大常委名單

北戴河“老人幫”定盤

台閩來接聯了誰 薄熙來移送司法

“九常委”打敗“七常委”

胡錦濤

薄熙來

李鵬六

新紀元

新紀元

新紀元

新紀元

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# Hong Kong's Media under China's Sharp Power

Bruce Ping-kuen LUI

## Introduction

The Chinese Communist Regime (“CCR”) has a long tradition of power struggle and consolidation out of the use of military and media (一手抓槍桿子，一手抓筆桿，)<sup>1</sup>. Media is on the frontline of ideological struggle<sup>2</sup> and treated as a mouthpiece and government apparatus rather than a watchdog in the context of CCR’s terminology. Although Hong Kong is under “One Country, Two Systems,” but some media organisations have to serve CCR’s purpose in Hong Kong as they are funded, invested, manipulated, affected or blessed by the CCR and its relevant sources.

Meanwhile, some outspoken, high-profile and independent media and publishers faced backfiring by China and unknown forces resulted in sudden personnel disappearance, physical assault, cyberattack, advertisement-pull, distribution blockage and accreditation-ban.

## Xi Jinping’s view on media

### *Before 2012, 18<sup>th</sup> CCP General Meeting*

Xi Jinping, the General Secretary of the Chinese Communist Party (“CCP”) plays a crucial role in country-wide media policy and Hong Kong policy. His view on media gives reference to Hong Kong regarding CCR’s objective in shaping Hong Kong’s media landscape.

An article entitled, “The media view of the General Secretary: Xi Jinping’s words to the media in those bygone years” (總書記的媒體觀：那些年習近平對媒體的寄語) by China National Radio, carried by CCTV.com in Feb. 2016, summarised Xi’s thoughts since 80’ on the role of the press. The top rules of Xi’s media thought is the party faith (黨性) and the adherence to the principle of news run by the authorities. The second important message is the dominance of positive reporting and the promotion of the party’s central theme. Xi also reminded those cadres who work for news and public opinion departments should not “make a mess”. When the above overriding principles are being observed, there is undoubtedly room for watchdog news and flexibility for the form of presentation.

### *Post 18<sup>th</sup> CCP General meeting*

After Xi Jinping took office as the General Secretary in the 18<sup>th</sup> CCP General Meeting, he tightened his grip and showed a more hostile stance on media policy. He emphasised

that ideological work is vital to the party in a national propaganda conference. Furthermore, an internal paper of the party known as “seven don't mention” has revealed that the top leaders' opposition to the “Western press view” as it “challenged the principle of party control over news and publishing.”<sup>3</sup> It also disagreed with the fourth estate and public institute nature of media as widely accepted by people nowadays.

Xi concluded that the mission of media, is firstly for the CCP, and then for the people. He summarised his motto as follows:

“Raise high the banner (高舉旗幟) [of Marxism-Leninism],  
direct [proper] guidance (引領導向) [of public opinion],  
focus on the central tasks (圍繞中心) [of the Party],  
unite the people (團結人民),  
encourage high morale (鼓舞士氣),  
spread public morals (成風化人),  
create cohesion (凝心聚力),  
clear up fallacies (澄清謬誤),  
distinguish between truth and falsehood (明辨是非),  
join China and the outside (聯接中外),  
connect with the world (溝通世界).

[The media] must take on this mission and responsibility, [and they] must place political orientation (政治方向) before all else, firmly adhering to the principle of the Party nature [of the media], firmly adhering to the Marxist View of Journalism (馬克思主義新聞觀), firmly adhering to correct guidance of public opinion (正確輿論導向), and firmly adhering to an emphasis on positive propaganda (正面宣傳為主).”<sup>4</sup>

—February 19, 2016, Speech to the Party's News and Public Opinion Work Conference

Since Xi Jinping took office in 2012, several media organisations in China have been rectified or shut down including the crackdown of Southern Weekly (2013) in Guangzhou,<sup>5</sup> the confiscation of Yanhuang Chunqiu (炎黃春秋) (2016), a 25-year old monthly history magazine in Beijing.<sup>6</sup> Meanwhile, many outspoken key opinion leaders (“KOLs”) in social media were being silenced with penalty ranged from jail to Weibo account ban.<sup>7</sup> Independent think tank, the Unirule Institute of Economics, was suppressed (2018).<sup>8</sup>

### **Key indicators in Hong Kong**

According to the 2017 Annual report of Hong Kong Journalists Association (“HKJA”), there has been a deteriorating situation of Hong Kong press freedom for the past 20 years since Britain handed Hong Kong back to the People's Republic of China (“PRC”). In the report, it wrote, “The past 20 years have seen a regression of freedom of expression in general and press freedom in particular despite the struggle by media workers

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against the trend.”<sup>9</sup>

It was evidenced in the result of 2017 Press Freedom Index compiled by the HKJA and HKU's public opinion programme. The press freedom index 2017 stood at 48 for the general public and 39.4 for the journalists, whereas the pass mark is 50. Since the study started in 2013, the index has never been above the passing score.<sup>10</sup>

The result is echoed with Hong Kong's ranking by the two international press watchdogs. Reporters Without Borders (RWB) ranks Hong Kong 70th out of 180 regions and countries in 2018 while it was respectable 18th as its first survey started in 2002. The Washington based Freedom House rated Hong Kong's press freedom status as free before 1997 and continuously categorised as partly free after 2008.

The common factor of decline was Beijing's intervention. RWB said Hong Kong's media “have experienced growing interference by the Chinese authorities”<sup>11</sup> while Freedom House accused “the Hong Kong and Chinese governments, alongside businesses with close Beijing ties, have increased political and economic pressure on media independence, resulting in self-censorship among journalists.”<sup>12</sup>

Next, we will discuss China's sharp power used in Hong Kong Media.

### **China's Sharp Power on Hong Kong media**

***Method: Acquisition and Personnel influence***

***Goal: The overall grip and operation control***

According to the 2017 report by Hong Kong Journalists Association, eight out of 26 mainstream media outlets are under Chinese control or have Chinese stakes,<sup>13</sup> and these include the biggest free-to-air TV channel, the biggest paid TV channel and the top English newspaper in town.

TVB, the predominant free TV channel in Hong Kong, its biggest shareholder is Li Ruigang, a CCP member, a Chinese media mogul and former deputy secretary general of Shanghai Government. Public concerns about how his CCP and non-HK resident status has affected the development and direction of the most influential media in the city. Besides, the paid TV channel i-Cable has changed hand in late 2017 to a local businessman who serves as a member and panel deputy of Chinese People's Political Consultative Conference,<sup>14</sup> no significant difference on news policy has been observed so far. Notably, two very senior and symbolic figure on China reporting, Kin-seng Lam and Lik-hon Wu have left i-Cable for a personal or job-hopping reason.

What was more explicit is the case of South China Morning Post. The Chinese Internet giant, Alibaba Group, bought Hong Kong's leading English newspaper SCMP in 2015. The top executive's aim of the deal reportedly is “to improve China's image and offer an alternative to what it calls the biased lens of Western news outlets.”<sup>15</sup> Critics say it is “moving away from independent journalism and pioneering a new form of propaganda.”<sup>16</sup>

Regarding personnel influence, the influential intellectual newspaper Ming Pao appointed the Malaysian Chong Tien Siong as chief editor in 2014, he suddenly fired the respectful executive chief editor Keung Kwok-yuen at midnight with immediate effect in 2016. According to Ming Pao Staff Association and media report, during the term of Chong, he decided to change the front page story of Ming Pao after midnight, from a report on confidential documents related to the 1989 Tiananmen massacre – already approved by top-level editors – to a story about Alibaba chief, Jack Ma.<sup>17</sup> Chong left Ming Pao in early 2017 and later serves as the Chairman of Belt and Road Strategy Council, Malaysia.<sup>18</sup>

Another news personnel issue happened in online media HK01, its investor Yu Pun Hoi who heavily invests in China acts as CEO and chief editor of the media out of sudden after the reshuffle of management. HKJA said it is uncommon and they are very concern about the move in a statement.<sup>19</sup>

The economic and management control is the most direct and effective way of influencing the media stance and development.

***Method: Drawing the redline***

***Goal: Halt freedom of expression in the name of National Security***

Beijing is good at determining the nature of people and matters, then decides if an action or what action needed to be taken towards it. By declaring the forbidden zone, media and public will have hesitation over their words and reports. In the case of “Hong Kong Independence”, the Chinese government regards it as something not discussable and should not fall within the scope of freedom of expression. For example, Foreign Correspondents’ Club invited Andy Chan, the convenor of HKNP for a luncheon talk in August 2018. Consequently, not just Chan was under fire; FCC was also heavily condemned. The director of broadcasting, the chief editor of the public broadcaster, Ka-wing Leung even banned the live-webcast in advance and emphasised that RTHK “should not be used as a platform to advocate Hong Kong independence.”<sup>20</sup> The RTHK programme staff union protested against the alleged intervention.<sup>21</sup>

Furthermore, the pro-Beijing camp proposed to take back the government property that FCC leases. Public worries whether the same threat will be replicated in the universities, media and telecommunication providers if one serves as a platform for the “promotion of Hong Kong Independence”, “self-determination” and so forth, will the government funding and licensing being affected as revenge?<sup>22</sup>

The same case happened to Benny, Tai Yiu-ting, the associate professor of law in HKU. He was invited to a seminar in Taiwan in March 2018 and talked about the “what if” status of “Hong Kong independence”. Instantly, Tai was blamed by Chinese<sup>23</sup> and Hong Kong governments,<sup>24</sup> denounced by patriotic groups and pro-Beijing media with the call to axe him from his post at HKU.<sup>25</sup>

The same redline applied to commentators. In the summer of 2016, a veteran political

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commentator and former Chief Editor of Hong Kong Economic Journal Joseph Lian's column was being cut over the weekend and effective on Monday after he wrote about the theoretical possibilities of Hong Kong independence.<sup>26</sup>

According to a statement issued by the Statement of the Commissioner's Office of the Foreign Affairs Ministry of the PRC in Hong Kong, "Advocacy for "Hong Kong independence" violates the Constitution and the law. It by no means falls within the purview of free speech."<sup>27</sup>

The so-called redline is directly formed from the top. President Xi Jinping declared the redline to Hong Kong's new administration after the inaugural ceremony on 1 July 2017. Xi said, "Any attempt to endanger China's sovereignty and security, challenge the power of the central government and the authority of the Basic Law of the HKSAR or use Hong Kong to carry out infiltration and sabotage activities against the mainland is an act that crosses the red line, and is impermissible."<sup>28</sup> This line is repeatedly mentioned on and off by Hong Kong's top government officials then.

Under the name of national security, the CCR legislated the safety of the regime, i.e. CCR itself, as the definition of national security. Therefore, CCR's security equals national security in the 2015 enacted national security law. Moreover, China's National Peoples' Congress amended its constitution in March 2018, saying that "The leadership of the Communist Party of China is the defining feature of socialism with Chinese characteristics" in Article One.<sup>29</sup> Hong Kong people worried about whether chanting the slogan "End of one party dictatorship" may violate the law. The former director of Hong Kong and Macau Office, Wang Guangya ascertained that saying so is a breach to the Constitution.<sup>30</sup>

With the current redline, some critical commentators who are not in line with the party are being blacklisted by certain media. Reporters are not allowed to seek their comments for the stories. Instead, pro-establishment and pro-Beijing commentators are under greenlights by the top management of some big news organisations.<sup>31</sup>

Furthermore, topic and people related to the pro-democratic umbrella movement in Hong Kong are also something sensitive. Asia society cancelled a screening of the documentary film "Raise the Umbrella" in 2016.<sup>32</sup> Hong Kong University of Science and Technology showed the film in November 2017 but banned the after-film discussion with Benny Tai and Kin-man Chan, the co-founders of Occupy Central Movement, reportedly, the reason was "keeping politics out of the campus."<sup>33</sup>

On the other hand, writing about the family wealth of top Chinese leaders especially Xi Jinping's ally may be another taboo. Shirley Yam, a respected political, financial columnist resigned from her eleven-year job after writing an article on the possible family business of Li Zhanshu, the politburo standing committee of the 19<sup>th</sup> CCP central committee.<sup>34</sup>

As a result, the red line will be drawn one after one to protect the security and image of the party. Speeches and reports promoting those taboos may be prohibited.



***Method: Physical assault and Personnel disappearance***

***Goal: Termination or suspension of operation, the spread of fears***

The series of five staff members' disappearance of Causeway Bay Bookstore in 2015 resulted in the termination of its publishing business. Its owner Lam Wing-kee released in custody later on planned to reopen the bookshop in Taiwan in September 2018. However, reports said the investor faced pressure from China and stopped the plan.<sup>35</sup> Furthermore, three more persons-in-charge (Yao Wen-tian<sup>36</sup>, Guo Zhongxiao, Wang Jianmin<sup>37</sup>) of a Hong Kong-based political publisher and magazine were being sentenced to jail in the Mainland, which led to the shutdown of books and magazine publishing.

For physical assault, Kevin Lau, the former chief editor of Ming Pao was stabbed six times by an assailant armed with a meat cleaver, Lau finally recovered from injury and believed that the attack was related to his work.<sup>38</sup> Other physical assaults include those happened in Mainland China. Plainclothes government officials attacked an I-Cable TV reporter, Ho-fai Chan, during his on-site coverage of the 10th anniversary of Sichuan earthquake in May 2018.<sup>39</sup> In Beijing, a Now TV cameraman was being handcuff-arrested when he was reporting the case hearing of one of the lawyers in the "709 crackdowns on human rights lawyers".<sup>40</sup>

Brutality is the most direct and unlawful method to stop the work of reporters and operation of publishers. Fear spreads through the society thus a chilling effect was achieved.

***Method: Advertisement pull and other "punishment"***

***Goal: Revenue cut off and "voluntary resignation"***

The Next Media group with Next Magazine and Apple Daily was being targeted since 2014. Commercially, advertisements were pulled off in a mass scale.<sup>41</sup> Physically, the crowd was deployed to block the logistic publishing of the newspaper.<sup>42</sup> The boss of Next Media, Jimmy Lai, was assaulted by a man throwing animal entrails,<sup>43</sup> his home and office were firebombed.<sup>44</sup>

On the other hand, an unsuccessful business deal was a severe blow to the Next Magazine. In July 2017, Next Digital announced it would sell its magazine business to Gossip Daily Limited. After receiving the earnest money and handed Next Magazine to the buyer's operation, Next Digital had not received the 75% remaining fund from the buyer when the completion date being pushed back three times. Finally, the deal was terminated. Next Magazine went digital and ended its 28 years of publishing, two third of its staffs left or being laid off.<sup>45</sup>

In November 2014, TVB news filmed seven policemen beating up a protestor with punches and kicks. Upon the on-air report, the reporters and editors disagreed with the censored wordings from the news controller and over 100 TVB news staff signed an open letter to petition. This was the biggest newsroom petition in Hong Kong TV

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history. Gradually, the job of the key persons involved was being “rearranged”, from assistant assignment editor to chief researcher, from main time cast to general time slot, from main dialogue programme to side-lined job. Eventually, most of the main reporters and editors involved in the petition “resigned voluntarily.”<sup>46</sup>

***Method: The use of media for propaganda***

***Goal: increase the creditability of the government***

During the disappearance of staff of Causeway Bay Bookstore in 2015-2016 and the crackdown of 709 human rights lawyers in 2015, several Hong Kong media organisations are being used as a confession platform for the “missing person” or lawyers. Mainland police department arranged those interviews with the director, lighting and scripts, plus uniformed officers guiding behind. The detained interviewees were believed not in their free will.<sup>47</sup> However, some media served the purpose of Chinese government without unveiling the “behind the scene” to the audience thus misleading the public.<sup>48</sup>

Initially, CCTV did this as party mouthpiece, now this kind of “culture” comes to Hong Kong. The Chinese government is consuming the creditability of Hong Kong media to increase the trustworthiness of manipulated information.

***Method: The dominance of Market***

***Goal: The Marginalization of different views and promotion of the main Theme***

In Hong Kong, the leading publishers and bookstores dominating the market are run by a company held by the Liaison Office of the Central People's Government in Hong Kong. With the massive funding and support from the Chinese government, those publishers and bookstores can easily outperform competitors who are only based on the market operation.<sup>49</sup> With their leading market share and branches in major spots of Hong Kong, universities and airports, the Liaison Office backed bookstores formed the best shop network in the city. The selection of books is not purely a market decision. They can censor out sensitive titles and different views based on political agenda.

When the book market is distorted and dominated in this way, the central theme and government voices will be further promoted, but different views are expected to be marginalised.

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## CHAPTER 4

### *Hong Kong's Media under China's Sharp Power*

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我

你穿的  
白衣服  
好看

女孩  
我可

## Making of patriotic:

### *Experimenting with China's Sharp Power in Hong Kong's Education*

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*“In Hong Kong, pro-China is the opposite of pro-democracy, not the opposite of unpatriotic”, a note from a Hong Kong published dictionary stated.<sup>1</sup>*

### Introduction

#### ***Hong Kong as an “experimental point” of sharp power in winning people's heart***

Borrowing Heilmann's theory on the policy of the People's Republic of China (“PRC”), Hong Kong can be described as an “experimental point” for testing the effectiveness of policies of the Chinese Communist Regime (“CCR”) which can potentially be transplanted to other countries.<sup>2</sup> Thus, Hong Kong is a special field for the world to understand how the CCR is attempting to spread her influence with soft and hard power.

There is a saying about the “unpatriotic” nature of Hong Kong people. “The sovereignty over Hong Kong has been transferred on 1st July 1997, yet the heart of Hong Kong people has not returned (to China).” Purely coercive devices of “hard” power are not as easy to use in Hong Kong under the policy of “One Country, Two Systems.” Moreover, hard power itself may generate a negative effect in the battle of winning people's heart. Also, the non-intervention policy<sup>3</sup> is perceived as failed from the perspective of the CCR.<sup>4</sup>

Under such circumstances, sharp power, which is more flexible, turns out to be a rational choice for the CCR. The ultimate goal of exercising sharp power in Hong Kong's education is to construct a hegemonic discourse,<sup>5</sup> which is not easy to actualise effectively just with hard power or soft power, especially when the target audiences have become “smarter” nowadays.<sup>6</sup> The question is in what way the tools of sharp power - which are good at deceiving, manipulating, threatening and confusing - can be used effectively to prepare for the “return” of people's hearts.

Education is important in nurturing an appropriate political culture for sustaining Hong Kong's core values. However, there is worry that China's sharp power is infiltrating it. Thus, education in Hong Kong has become a battleground of ideologies for winning people's hearts. In the following parts, we will see how hard power and soft power are being exercised interchangeably, and strengthened mutually to become a “sharp” strategy towards Hong Kong's education in constructing a hegemonic discourse of patriotism.<sup>7</sup>

#### **Sharp power as “softer” hard power in education**

##### ***Constitution, laws and legislation***

After several large-scale protests against the CCR broke out in Hong Kong in the past few years, especially after the Umbrella Movement in 2014, the CCR blamed the education of the Hong Kong Special Administrative Region (“HK-SAR”), and explicitly demanded that the HKSAR government must promote patriotic national education. From the perspective of the CCR, actively “setting a definitive tone” (一錘定音) of Hong Kong’s education at the constitutional level is a critical move to lay a foundation for hegemony that can divide and repress alternative narratives. Hence, the notion of “education sovereignty” is raised.<sup>8</sup> Educational issues, on the surface, should be the internal matter of the HKSAR under “One Country, Two Systems.” Liu Xiangling, a PRC scholar, pointed out that educational sovereignty is an idea under national sovereignty. Educational sovereignty has to serve the need of national sovereignty and has a strong political function. It includes legislative, executive, judicial, and developmental powers on educational matters. According to Liu, as educational sovereignty is a part of the national sovereignty, it applies to the entire nation, including the special administrative regions in Hong Kong and Macau.<sup>9</sup> She further argues that even though education sovereignty should only be a power on reserve, when Hong Kong’s education has caused problems and affected the baseline of national security, the CCR must intervene. This idea has become the ground of intervention by the CCR on educational issues in Hong Kong. It must be ensured that education in Hong Kong serves the interest of “One Country” whenever there is a conflict with the interest of “Two Systems.” In reality, education sovereignty has become not just a symbolic power on reserve but a coercive hard power which is forceful.

As will be presented in the following parts, these powers are being actualized step by step in the past few years. As an example, the “National Anthem Education” has been set as the first case of legalisation for a particular form of patriotic national education in Hong Kong. Following the policy formulation and enactment of a law on the national anthem by the CCR in the Mainland China, the HKSAR Government is going to codify a similar law on the national anthem. There will then be a legal duty on the HKSAR Government to enforce national anthem education in the region. The introduction of national anthem education in the HKSAR by law aims at nurturing national identity and patriotism through music education. Although the details of the legislation are yet to be known, the controversial nature of the NAL has already caused hot debates in the community. If the legislation allows one and only one official version of the national anthem, and does not allow other interpretations, its indoctrinatory nature will then be explicitly shown.

##### ***Appointments and mechanisms***

Appointment of individuals to critical positions of decision-making in Hong



Kong's education is under the CCR's influence. The appointment of Johannes Man-man Chan to be the Vice-President of the University of Hong Kong ("HKU") was turned down by the Council of HKU under pressure from the CCR due to his close ties to a social movement activist, who is also his colleague at the Faculty of Law of HKU.<sup>10</sup> There are several other reported cases in which academics are being removed, blocked from promotion, or pressurised.<sup>11</sup>

On the contrary, Yuk-lin Choi, a Pro-Beijing secondary school principal, has been accused of being unprofessional and biased in handling controversial educational issues.<sup>12</sup> She was still appointed as the Under Secretary for Education of the HKSAR Government by Carrie Lam, the Chief Executive ("CE") of the HKSAR, despite weeks of vocal opposition from the public. Many critics believed that Carrie Lam must be following an order from the CCR.

From the above examples, it seems that "political reliability" has become a critical criterion for important positions in education. Manipulating the appointment and dismissal processes is a kind of strategic intervention to effectively implement education measures favoured by the CCR in Hong Kong's education. These measures include controlling speech and behaviours in educational institutions, carrying out the new curriculum with desirable teaching materials, framing how student activities should be conducted, and channelling the direction of research projects. The appointment of the Under Secretary for Education is especially influential for future interference.

At the executive level, policies and mechanisms targeting Hong Kong's education are set up with the active participation of the CCR to ensure the constitutional and legislative powers of the CCR on education would be manifested and enforced. An official circular issued by the State Council in January 2017 disclosed the policy of "Deepen education cooperation and exchanges between the Mainland and Hong Kong, Macau and Taiwan." It aims at "improving the mechanism of education cooperation and exchanges between the Mainland and Hong Kong and Macau."<sup>13</sup> Even before the circular was published, a "meeting mechanism" has already been established since 2016. "Working meetings" between the Education Bureau ("EDB") of the HKSAR Government and the Ministry of Education of the PRC ("MoE") have been regularised to be conducted twice a year. Although officials of the EDB described the meeting mechanism as "like other bilateral meetings," some critics pointed out that such "meeting mechanism" is understood in the PRC to be more than a general meeting for exchanging views and is seen as an institutionalised mechanism for making decisions.<sup>14</sup>

There is worry that under such circumstances, the EDB is hard to be treated on an equal position of the MoE, and the Hong Kong public will not be informed even if there are important decisions made in such a meeting.<sup>15</sup> A decision of "cooperation" would be made without the participation of the Legislative Council ("LegCo") of the HKSAR and representatives of education professionals in Hong Kong and the influences on Hong Kong's education from such "cooperation" could be broad and deep. The circular listed some areas which are required to be strengthened under such cooperation. They include (i) teaching of Chinese History and National Education, (ii) cooperation in teacher training, curriculum, teaching materials, pedagogies, assessment and supervision, (iii) attracting Hong Kong students to study in China, and (iv)

## CHAPTER 5

### *Making of Patriotic*

improving the quality of exchange and cooperation.<sup>16</sup>

The control of critical positions and decision-making mechanisms in education makes the CCR's direct decision-making in educational matters in Hong Kong much easier, so that such details of materials, activities, programs, practices aiming at ideological control can be implemented more effectively. The tools of sharp power may be deceptive and confusing to discern when the implementation of educational policies is covered by such mechanisms and is not guarded by trustworthy officials.

#### ***Softer hard power functions as a covered intervention***

Under the vague term of “cooperation”, the CCR obtained an official position to manipulate decision-making in Hong Kong's education at various levels.<sup>17</sup> In October 2017, the Minister of Education of the PRC, Chen Baosheng in an interview said promoting patriotic national education is the responsibility of the HKSAR Government, and the MoE would always offer assistance upon HKSAR Government's request. He further stated that the HKSAR Government would still decide the decisions on how to promote patriotic national education and to adopt the curriculum of the PRC in the HKSAR Government. The MoE will certainly “respond on request, answer when asked, help whenever needed.”<sup>18</sup>

The above examples presented a soft tone generally by using phrases like “strengthening the collaboration,” “supporting the youth in the understanding of the Motherland” and “assisting on request.” However, Chen Zuoer, the head of the top think tank of the CCR on Hong Kong and former deputy director of the Hong Kong and Macau Affairs Office of the State Council of the PRC used a much stronger tone. In a seminar concerning education and youth of Hong Kong in 2015, Chen Zuoer criticised the young people participating in the Umbrella Movement. He then claimed that the Director of the EDB as a major official of Hong Kong should be “subject to supervision from the central government and the Hong Kong society all the time.” He said the Director “must guide sponsoring bodies, advisory bodies and educators at all levels to nurture qualified citizen correctly.”<sup>19</sup>

Although national sovereignty is superior to education sovereignty of the HKSAR, the CCR still has to use a mix of strong and soft tones in its intervention. Since it is stated explicitly in the Basic Law of the HKSAR, the constitutional instrument of Hong Kong, that education policies and their implementation are internal matters, it may cause backfire from Hong Kong people if interventions of the CCR are too conspicuous and strong. Therefore, the CCR's intervention cannot be so explicit, and as a result, only a few manifestations can be identified.

Moreover, the intervention is always covered by existing mechanisms and processes of the HKSAR. The approach of Chen Baosheng shows how “covered intervention” could soften hard power when needed, whereas Chen Zuoer's approach shows the hard nature of legitimised interventions through constitution, laws and decision-making mechanisms. The manipulation of decision-making mechanisms and appointments is “sharp” in nature and prepares an easier path for “softer” activities and programs aiming at influencing the next generation can be implemented more effectively.

The CCR's intervention on Hong Kong's education demonstrates that China's sharp power is at least partially effective in bypassing the constraints of "One Country, Two Systems" by exercising power on "reserve." A recent example to use softer hard power is the advocacy of "Education for national defence or national security" and "Basic Law Education" to reactivate the independent national education subject which was turned down in 2012.

"Education for national defence" operates at an ideological level and aims at nurturing patriotic feelings by arousing fear of national insecurity and pride of a collective identity. Hong Kong people are being reminded that "the People's Liberation Army is right here in Hong Kong."<sup>20</sup> "Basic Law Education" operates instead at an administrative level, and the EDB announced in 2017 that all secondary schools would have to teach 51 hours of Basic Law in the junior education curriculum. The recommended teaching materials were criticized as adopting many strategies with a strong tendency of indoctrination such as indoctrination by omission, de-controversialisation of controversial issues, biased presentation and emotional abuse of languages.

Besides the threat from the military force, the "harder" side of China's sharp power has been manifested in the daily life of academics and educators. Demonstrations against teachers and students by pro-Beijing camp including verbal or physical violence, have become a common tactic to silence academics holding different views. The action will not be executed by officials of the People's Liberation Army or the HKSAR Government but by pro-Beijing groups in the civil society of Hong Kong. In an incident, about ten members of a pro-Beijing group threatened to tear down Hong Kong independence-themed posters at the campus of the Chinese University of Hong Kong.<sup>21</sup>

Critics worried that academic freedom and institutional autonomy are at risk due to a series of intervention. As Carrico's report stated, controversial academic figures have been suppressed, and state-appointed figures are now governing universities in Hong Kong.<sup>22</sup> Direct pressure coming from the CCR is also growing. The former President of the HKU, Professor Peter Mathieson, left his post in 2018 without finishing his contract.<sup>23</sup> He admitted that he was given advice "several times" by the Central Liaison Office (CLO), an official institution of the CCR stationed in the HKSAR.<sup>24</sup>

This type of covered intervention to a certain extent has effectively pressurised, weakened and silenced constraining powers that are still active in Hong Kong, including the pro-democracy camp, the courts, the civil society, and individuals and groups within the education sector in Hong Kong. In an area which the CCR should have no direct governing power, this kind of pressurisation covered by unofficial "casual talk" outside official mechanisms allows the CCR to silence dissidents or to manipulate decision-making in the education sector.

Although they are not hard power purely of direct coercion, the above forms of China's sharp power functioned mainly as intimidation and manipulation of different voices can weaken, suppress or clear the opposition or constraining powers, which may be able to hinder the CCR's control over the ideological realm.

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#### **Sharp power as “harder” soft power in education**

Authoritarian states may find it hard to impose or transmit ideas extensively to the next generation nowadays. They need more effective tools to gain real support. This is especially true in a special administrative region under “One Country, Two Systems,” in which the CCR is constrained not to interfere with internal matters such as education. China’s sharp power can then be used to maximise the influence of the CCR through the action of the HKSAR Government, the CLO, and local pro-Beijing business groups and organisations through a mix of soft and hard ways of manipulation. Under the shadow of softer hard power, the tools of sharp power may be sugar-coated or may manipulate the information environments making it difficult to discern.

In the past few years, the CLO, pro-Beijing groups and HKSAR officials play an important role to experiment with strategies to achieve the CCR’s goal with harder soft power mentioned above. This echoes the demands of the President Xi Jinping of the PRC made in a speech he gave on 1<sup>st</sup> July 2017. He demanded that the HKSAR Government need “to pay attention to education, strengthen the leadership on patriotic education for the youth” and local leaders in various sectors have “to take the lead in taking care of the youth, to nurture a good environment for passing the tradition of patriotism to the next generation.”<sup>25</sup> It becomes the most recent and explicit signal to local pro-Beijing camp to experiment with different methods to win the youth’s heart. Curriculum development and textbook are the battlefields.

#### **Curriculum and textbooks**

From an educational point of view, curriculum and textbooks are supposed to manifest soft power by attraction and persuasion, at least to indoctrinate ideas in a softer “educating” way. This soft aspect of power has been hardening in Hong Kong.

Ling Youshi, a member of the National Committee of the Chinese People’s Political Consultative Conference of the PRC, suggested that education sovereignty should be manifested as soon as possible. She argued that the focus of education sovereignty should be on the curriculum and textbooks by asking the following questions: “What to teach? What should and should not be taught?” One of her concerns was the absence of a compulsory independent subject in Chinese History, which is supposed to nurture a nationalistic self in the students. She also blamed that unlike in Mainland China, there is no standard textbook prepared by the government in Hong Kong.<sup>26</sup>

The following are some examples of suspected cases of intervention on curriculum and textbooks. Despite the contents of textbooks were seen as unproblematic in the past 20 years, a review panel commissioned by the EDB recently criticized some local Chinese History textbooks of using “inappropriate wordings” and “confusing concepts” in describing the sovereignty of Hong Kong as “transferred to the Mainland China” and the PRC as a “one-party state of dictatorship.”<sup>27</sup> One of the biggest textbook publishers in Hong Kong, the Hong Kong Educational Publishing Company (“HKEP”), was recently found to be a subsidiary of the Sino United Publishing (Holdings) Limited, which is directly controlled by the CLO. The HKEP deleted the phrase “separation of powers” in the description of the political system of Hong Kong in the latest edition of



its Liberal Studies textbook. This is considered to be following a public remark made by the Director of the CLO about the status of the CE of the HKSAR. The CE was said to have an “aloof” legal status and is “above” the administration, the legislature and the judiciary.<sup>28</sup>

In the latest edition of HKEP’s Chinese History textbook, it is accused of using phrases “near to political propaganda and may be a kind of indoctrination.” This edition used only a few lines to mention the June Fourth Incident in 1989 and stated that the People’s Liberation Army subsided the protests without saying the use of arm forces and the thousands of injuries and deaths.<sup>29</sup>

The construction of a hegemonic discourse through shifting meaning, re-interpretation of history and manipulation of information is a form of sharp power. A textbook publisher under the CCR’s direct control ensures that the information environment of education will be favourable to the CCR. Half a year before the textbook review report mentioned above was disclosed, the EDB asked principals of schools to offer Chinese History as a compulsory separate subject for junior secondary students. However, some schools still hesitated that this might undermine their years of hard work in integrating social subjects. Soon after the EDB’s meetings with school principals, the CLO admitted that they had invited principals and teachers to discuss the issue and “listen to the voice of principals and teachers.”<sup>30</sup>

Another controversial school subject is Liberal Studies (“LS”). LS has been a mandatory subject offered to all senior secondary school students since 2009. The educational aim of LS is to equip students to face the competitive knowledge-based global economy by enabling students to understand the contemporary world and its pluralistic nature through making connections among different disciplines, examining issues from a variety of perspectives and constructing personal knowledge of immediate relevance to themselves in today’s world.

However, it is also assigned an educational task to nurture citizenship. It was expected that LS can be a potential vehicle for civic education.<sup>31</sup> LS allows, for the first time, all senior secondary students to study explicitly topics of political knowledge. The recommended pedagogies emphasise students’ construction of knowledge with learning and teaching structured around an enquiry into contemporary and perennial issues. It has to be supported by experiential learning involving non-governmental organisations. These characteristics are useful for the cultivation of informed, rational and active citizens.<sup>32</sup>

However, the subject was accused by the pro-Beijing camp to have aroused the youth to participate actively and blindly in the Umbrellas Movement. Therefore, the pro-Beijing camp has suggested many controversial proposals to minimise the impact of the subject. They recommended that LS should be changed into a non-mandatory subject, the content related to politics should be reduced, the compulsory items in the public examination should be converted to be optional, and questions related to politics in the public examination should be avoided.

One primary appeal of the pro-Beijing camp was to neutralise the meaning of a signif-

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icant component of LS: critical thinking. Although studies found that students usually attained a more comprehensive view of issues after studying LS, the pro-Beijing camp criticised the original Chinese translation of “critical thinking” is easy to be understood as complaining and disagreeing (批判思考). They advocated replacing with a translation emphasising “thinking carefully and clearly” (慎思明辨). However, there is worry that the suggested translation will nurture a cynical attitude of avoiding making ethical and value judgements and encouraging “neutral” attitude that is uncritical to power. Although “rational thinking” is not a focus in secondary education in Hong Kong, it is promoted as an “alternative” to “critical thinking.”

### **The role and function of pro-Beijing groups**

In addition to the moves of the HKSAR Government and the CLO, pro-Beijing social leaders in Hong Kong have also worked on the issue “to nurture a good environment for passing the tradition of patriotism to the next generation.”

The civil society is supposed to be a social sphere independent of the state and the market. However, pro-Beijing non-governmental groups usually have close ties to the CCR. In 2018, a new non-governmental organisation, the “Education Centre of National History,” has been founded by local leaders and supported by the CLO. The Centre said that since Chinese History will soon become a compulsory subject for junior secondary students, senior primary students (10-12 years old) will be their target audience.<sup>33</sup>

The founding members and supporters of the Centre have been promoting a cultural sense of patriotic national identity and related ideology for a long time before the Centre was established.<sup>34</sup> This form of influence is softer not only because it offers incentives rather than using threats, but also it nurtures a sense of pride associated with the Chinese culture, which is influencing people’s heart in a veiled way.

China’s sharp power uses carrot and ideology interchangeably in education. Carrot is used to mobilise conditional cooperation, and ideology is used when real support is desired. Besides awards regarding Chinese culture and history, there are more general and large-scale award schemes conducted by pro-Beijing groups. After participating in a grant exchange programs with students from Mainland China, awardees of the Outstanding Student Awards were invited to join the Chinese Communist Party (“CCP”). One student rejected and said, “I believe it’s an activity for them to select subordinates.” However, he was isolated from other participants who chose to join the CCP. The interviewee also mentioned that the CLO had used their network to “raised fund” from businessmen for supporting these outstanding student groups to join exchange trips to China.<sup>35</sup>

There are two primary functions of networking through these award schemes or exchange programs. In the circles of teachers and student participants, it is easier to identify targets with a soft stance towards the CCR through these networks. At the same time, as the interviewee above stated, the gap between him and those who choose to join the CCP has been widened. In this sense, it is an effective strategy to divide by carrot.<sup>36</sup>

In general, pro-Beijing non-governmental groups occupy a more flexible position to deceive, to manipulate information, to harass and threat, to offer incentives, and to establish networks to win the hearts of the people in an authoritarian setting. They can play diverse roles that government officials are hesitant to play. In the above examples of awards, they even function more effectively than the government as the united front practices were well-covered. The cooperation of non-governmental groups in the pro-Beijing camp has allowed the influence of China's sharp power to go deeper. With resources advantage, these groups conduct exchange program, uniform group training and teacher and student awards.<sup>37</sup> They can deliver a patriotic education program, reward compliant behaviours, and can simultaneously weave their interpersonal network and extend future influences.

### **Is harder soft power effective in winning Hong Kong people's heart?**

The CLO, as seen in the previous part and this part, has taken up a more proactive stance in Hong Kong's internal affairs openly. In the aspect of education, these interventions are legitimised by "education sovereignty" which was interpreted as including not only legislative, executive, judicial power, but also developmental power on educational matters.<sup>38</sup> The strategy to exercise power is integrative. With the backup of hard power (threats and pressurisation) to remove and silence opponents, the "educational" influence from the CCR's attempts to indoctrinate, to neutralise, to attract, to persuade and to use relational influence to win as much "hearts" from the people.

Similar to what has happened in Western countries that several Confucius Institutes sponsored by the CCR are shut down due to the threat of academic freedom and national security, China's sharp power is also suffering a setback in Hong Kong under "One Country, Two Systems." China's sharp power seems to be not so successful in replacing soft power in winning people's heart.

The heart of a person would only "return" when consensus is acquired, and the individual voluntarily takes the move to identify himself with or willingly support the existing regime. China's sharp power in education relies more on the "soft" side of power and is probably slightly different from those in other aspects. However, the experiments of China's sharp power in Hong Kong's education and other areas showed that it is not very effective in winning people's heart in the short term. Although some award schemes could successfully make the participants integrate their ideals with the identification of China, there is resistance against the twisting the meanings in textbooks. Moreover, networking through non-governmental groups still rely on carrot rather than the ability to win real support. Suppressing with softer hard power seems to be more effective than preparing "hearts to return" with harder soft power. As illustrated above, China's sharp power in education will not be sufficient just with its coercive aspect. Hence there is room for the civil society and individuals in Hong Kong to arm our next generation with democratic values, knowledge and skills.

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#### Conclusion

Education in Hong Kong, which is important in nurturing an appropriate political culture for sustaining Hong Kong's core values, is being infiltrated by China's sharp power. For an authoritarian state, to construct a hegemonic discourse with the interplay of both coercive force and consensus is a challenging yet necessary task for winning hearts from another "system." The demand by President Xi Jinping that the HKSAR Government and local leaders should strengthen the leadership of patriotic education provides an umbrella for experimenting with sharper power in education. In Heilmann's words, they have "to keep the core strategic objectives firmly in mind, yet to be as agile and pragmatic as possible in choosing tactical and operational means."<sup>39</sup> This practical orientation backed with hard power explains why existing systems and regulations in Hong Kong are "surpassed" again and again in the past few years.

The uses of different tools of sharp power in education are supposed to serve the purpose of "preparing the return of people's heart", despite that, many Hong Kong people describe the event merely as "the handover of Hong Kong." Po-Keung Hui pointed out that "where to return to" is critical. If there is a "destination" for people's heart to return, will that be barbarity or humanity?<sup>40</sup>

#### Recommendations

As discussed, China's sharp power operates mainly in the cultural dimension, and one of its primary purposes in the HKSAR is to nurture a political culture with increasing receptiveness to the escalating authoritarian rule of the CCR over HKSAR. To resist the penetrating effect of China's sharp power, education for critical consciousness, emphasising on the enhancement of citizens' awareness and the competence to uphold Hong Kong's core values<sup>41</sup> should be consolidated. Education for critical consciousness could also contribute to the nurturing of informed, engaged, knowledgeable, critically thinking and interested citizens.<sup>42</sup>

Operationally, the authors would like to recommend the strengthening of civic mission of schools, which can be considered as the guardian of Hong Kong's core values. It involves the nurturing of (i) political literate individuals who can make use of their political knowledge, both theoretical and contextual, to understand and analyse the political context of Hong Kong; (ii) the competence to make moral value judgements and decisions in facing controversial political issues; and (iii) democratic personality<sup>43</sup> in our citizens.

However, are our educators in Hong Kong ready for this mission?



**NOTES**

1 Patrick Cummings and Hans-Georg Wolf, In A Dictionary of Hong Kong English: Words from the Fragrant Harbour (Hong Kong: Hong Kong University Press, 2011), pp. 129-140. (Retrieved from <http://www.jstor.org/stable/j.ctt1xwddf.25>.)

2 Sebastian Heilmann, Red Swan: How Unorthodox Policy-Making Facilitated China's Rise (Hong Kong: Chinese University Press, 2018).

3 Hong Kong's education policies as internal matters of the HKSAR were left un-intervened in the early stage after the transfer of sovereignty of Hong Kong to the PRC in 1997. When Hong Kong's education was under serious attack that it had failed to nurture the national identities of the youth which had led to the mass demonstration of students and the youth, the meaning of "One Country, Two Systems" began to shift gradually. The CCR started to step in after 2003 and particularly during the Umbrella Movement in 2014.

4 See Siu-kai Lau's speech on "The Changing policies of the Central Government on Hong Kong" in the "The Forum on the Outlook of Social and Economic Development 2018" on 17 January 2018, <https://www.master-insight.com/劉兆佳：轉變中的中央對港政策/>. Relatively "soft" strategies in education such as ubiquitous student exchange programs aiming at attracting and persuading Hong Kong youth to be "patriotic" are not effective: In 2017, 69.7% of youth aged 18 to 29 identified themselves as Hongkonger, whereas 0.3% of them identified themselves as "Chinese". (See the survey conducted by the Popular Opinion Programme, HKU, <https://thestandnews.com/politics/港大民研-18-29歲青年-香港人身份認同-創97後新高/>.)

5 The nature of hegemony, i.e. operating with both coercion and consensus, reflects the landscape of sharp power and the evolving patterns of influence from authoritarian states.

6 Ernest J. Wilson III, "Hard Power, Soft Power, Smart Power," *The Annals of the American Academy of Political and Social Science* (2008) Vol. 616, pp. 110-124.

7 In the context of the "HKSAR" which is under the policy of "One Country, Two Systems," hard power from China primarily comprise coercive, controlling and forceful powers such as military force and law, whereas soft power involves mostly ideas and instruments aiming to persuade and attract people. In Hong Kong, hard power from the CCR is softened and covered to minimise resistance, while soft power is hardened to manage every step of influence.

8 "Education sovereignty" has been defined as "nation-wide" and is effective in special administrative regions. It is the rationale for the CCR to "supervise" Hong Kong's education when necessary. It is forceful in the sense that it is an inseparable part of the overall sovereignty of the state.

9 Liu Xiangling, "Historical Review of China's Education Policies – Further Discussion of the Exercise of Education Sovereignty," *Journal of Lingbo University (Education Science Edition)* (2008), 30(4), pp. 42-46 (in Chinese). Professor Changle who also advocated the idea of education sovereignty said, "Hong Kong society misunderstands or not fully understand the meaning of "One Country, Two Systems", the constitution, the Basic Law and it's education, comprehensive jurisdiction of the Central Government, identification of the State and the core values of patriotism and love of Hong Kong. The 'misunderstanding or lack of complete understanding' was partially attributed to the failure of education."

10 Although the selection committee of HKU had reviewed Professor Johannes Man-man Chan's performance and planned to recommend him as the Vice-President at the end of 2014, a pro-Beijing newspaper disclosed the recommendation earlier and questioned his

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qualification since he was “at the same front” of those who advocated “Occupy Central”. According to Chan’s response, the attacks aimed to block outspoken academics to join the senior management of HKU. Chan also questioned how the pro-Beijing media could have learnt the recommendation before it was announced. He said that if the disclosure were related to government officials, it would be a serious case of intervention on freedom of academic and speech (*Mingpao* 3 February 2015). In the Council of the University of Hong Kong, Arthur Li was an outspoken member against Johannes Chan’s appointment. Li’s position in HKU was appointed by CY Leung, the then CE, in 2015, despite strong opposition. A poll showed that most staff of HKU had little to no confidence that Li would uphold academic freedom. However, he was still appointed to be the chairman of the Council around six months later. In the meeting of the Council, he denied CCR’s intervention and accused the request of procedural justice as “interference” with the Council. One common tactic for a powerholder to shift its responsibility under sharp power is to the language of democracy without analysis of the power relations. From the perspective of accountability, the possessor of official power of decision making has to take up the responsibility to ensure justice to be seen. In the case of Johannes Chan, the hard power was coated with the discourse of “autonomy” of the Council.

11 They included Wan-kan Chin of Lingnan University, Benny Yiu-ting Tai of HKU, Chun-tai Cheng of Poly University of Hong Kong and Wai-kwok Wong of the Baptist University of Hong Kong. See Kevin Carrico, *Academic Freedom in Hong Kong since 2015: Between Two Systems*. *Hong Kong Watch*, a report of the Hong Kong Watch (2018), <https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/5a65b8ece-4966ba24236ddd4/1516615925139/Academic+Freedom+report+%281%29.pdf>; “‘I am a troublemaker’: Hong Kong Baptist University denies contract extension for staff union chair,” *Hong Kong Free Press*, 27 February 2018.

12 After 1997, the HKSAR Government had been pushing hard to enhance the nurturing of national identity through national education focusing on cultural China and avoiding political China, through various educational activities within the formal curriculum and extra-curriculum. In the visit of former President of PRC, Hu Jintao, to the tenth anniversary of the HKSAR in 2007, he proclaimed that there was a need to enhance national education in Hong Kong schools. Donald Tsang, the CE then, introduced Moral and National Education as a mandatory subject to replace moral and civic education, at all levels of schools in 2012. The HKSAR Government shelved the subject before it was formally launched because of the massive demonstrations against the indoctrinatory nature of the Moral and National Education, particularly the associated teaching packages supported by the Government, which presented a biased and favorable view of China. At that time, Yuk Lin Choi was the vice-president of the Hong Kong Federation of Education Workers, and it was the Federation which published the controversial booklet called *The China Model* (中國模式). The booklet was criticised widely as a “brainwashing” teacher material of national education. Though the mandatory subject has been shelved, national education of similar nature has never stopped. Instead, it developed further through permeation into different relevant subjects, including textbooks, teaching packages, even down to kindergarten level, and various extra-curricular activities, including student exchange, experiential learning programmes with schools in Mainland China.

13 “Thirteen Five Year Plan on Education” issued by the State Council of the PRC on 10 January 2017, [http://www.moe.gov.cn/jyb\\_xxgk/moe\\_1777/moe\\_1778/201701/t20170119\\_295319.html](http://www.moe.gov.cn/jyb_xxgk/moe_1777/moe_1778/201701/t20170119_295319.html).

14 When asked to increase transparency of such meeting in the LegCo, a government official of the EDB replied, “...our periodic working meetings with the MoE are also held

behind closed doors. Out of respect for our counterparts, it is not appropriate for us to unilaterally publish the meeting papers or disclose the contents of the meetings in detail.”

15 Bruce Ping-kuen Lui, “Further Discussion on the task on education of the Central Government” (in Chinese), *Mingpao* 9 June 2017; Mechanism for holding regular working meetings established by the Education Bureau and the State Ministry of Education, May 31 2017, <http://www.info.gov.hk/gia/general/201705/31/P2017053100531.htm>.

16 See Note 13 above.

17 If Hong Kong is an “experimental point” allowed for the local testing effectiveness of sharp power and its tools, the current Chief Executive Carrie Lam has used the room for testing methods achieving the goals set by the central government more successfully. She can use the existing resources, regulations and structures to meet the goals of hard power more softly compare with the former harder CE, i.e. to make hard power “sharper” in achieving goals. For example, before the appointment of the controversial Under Secretary for Education, the introduction of the compulsory independent Chinese History curriculum and promoting the legislation of National Anthem (Education) Law, she increased spending on education by HK\$3.6 billion in the beginning of her term of office and to soften the opposition from the critics. It is a sharp contrast to her predecessor’s method which leads to massive protest in 2012.

18 <https://topick.hket.com/article/1930554/陳寶生指港獨與教育有關%20港府有責任推國民教育>; [http://orientaldaily.on.cc/cnt/news/20171024/mobile/odn-20171024-1024\\_00176\\_014.html](http://orientaldaily.on.cc/cnt/news/20171024/mobile/odn-20171024-1024_00176_014.html).

19 [http://www.cahkms.org/ResearchInformation/ResearchConsultingContent\\_44.html](http://www.cahkms.org/ResearchInformation/ResearchConsultingContent_44.html).

20 Such kind of military-related national education is new to Hong Kong. Even the controversial patriotic national education was originally planned to carry out in the name of Moral and National Education in 2012. However, in a ceremony of the newly established uniform group “Hong Kong Army Cadets Association” (香港青少年軍總會), the Director of the Central Liaison Office stated that the development of the Army Cadets represents “the trend of the rise of China,” and the association was “supported by the HKSAR government, the Hong Kong Garrison of the People’s Liberation Army and all sectors of Hong Kong.” In another occasion, the representative of the Hong Kong Garrison of the People’s Liberation Army announced that they are going to “expand the area of walking out and inviting in, to promote the Education for national defence”. The People’s Liberation Army in Hong Kong, which symbolise “the hardest power” of the CCR, is “invisible” in the public’s eyes for a long period after 1997. However, given the current situation as discussed above, they are going to open up themselves and will have a role to play in Hong Kong’s education. This demonstrates the reality covered by a softer tone of “responding on request, answering when asked, helping whenever needed.” It was reported that the Central Liaison Office has pressurised uniform groups such as Hong Kong Air Cadet Corps, Hong Kong Road Safety Patrol, Hong Kong St. John Ambulance to switch to the Chinese style of marching. The Central Liaison Office claimed that if they switch to Chinese style of marching (also adopted by the PLA), “the People’s Liberation Army is right here in Hong Kong” to help.

21 “More clashes at Chinese University over independence posters,” *SCMP* 17 September 2017.

22 See Kevin Carrico, Academic Freedom (Note 11 above). Also, a professor in Hong Kong described such sharp power as covered by an invisible force. He considered that more and more intervention and control “is done implicitly, not explicitly,” with the whole system geared to deliver “a very clear message that you should keep silent and focus on your

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research”. (“Hong Kong fears Beijing crackdown on academic freedom,” *The Guardian*, 17 Mar 2015).

23 Professor Mathieson assumed office at the HKU in 2014, a year ahead of the broken out of the Umbrella Movement. He witnessed that “all the university leaders have had contact with the liaison office.” The heads of all eight funded universities in Hong Kong were pressured to issue a joint statement condemning Hong Kong independence in 2017. Professor Mathieson’s successor, Professor Zhang Xiang, was questioned by scholars and students of HKU of his ties to the CCR.

24 “Outgoing HKU chief says Beijing officials have met him ‘several times’ and wished higher education ‘wasn’t so politicised’,” *SCMP* 8 January 2018.

25 <http://std.stheadline.com/instant/articles/detail/441805>-香港-習近平：著力加強青少年愛國主義教育+. There has been a gradual change in the interpretation and implementation of “One Country, Two Systems” after 2003, 2012, and 2014. The CCR has changed her role from passive toleration to active domination and intervention in education and political matters. After Xi took office, the present period is the most active period of intervention.

26 Ling Youshi, “An education revolution that hurt the fundamentals after the resumption of sovereignty,” (in Chinese) *Mingpao* 29 May 2016; Ling Youshi, “Implementation of Education Sovereignty in Hong Kong as soon as possible,” (in Chinese) *Bauhinia Magazine* 1 March 2018.

27 <http://cablenews.i-cable.com/ci/videopage/program/122508502/新聞刺針/歷史教科書評審內容要商榷？/>.

28 <https://hk.news.appledaily.com/local/daily/article/20180709/20444336>.

29 <https://hk.news.appledaily.com/local/daily/article/20180820/20480294>; <http://news.rthk.hk/rthk/ch/component/k2/1413937-20180822.htm>.

30 [https://news.mingpao.com/ins/instantnews/web\\_tc/article/20171104/s00001/1509780519892](https://news.mingpao.com/ins/instantnews/web_tc/article/20171104/s00001/1509780519892).

31 Yan-wing Leung and Wai-wa Yuen, “A critical reflection of the evolution of civic education in Hong Kong schools,” *Pacific-Asian Education* (2009). 21(1), 35-50.

32 Steven E. Finkel, “Can Democracy Be Taught?” *Journal of Democracy* (2003) 14(4): 137-151;

Klaus Boehnke and Mandy Boehnke, “Once a Peacenik--Always a Peacenik? Results From a German Six-Wave, Twenty-Year Longitudinal Study,” *Peace and Conflict: Journal of Peace Psychology*, Vol 11(3), Sep 2005, 337-354.

33 <https://www.hkcnews.com/article/13375/中國歷史科-團結香港基金-13384/中國歷史科>.

34 For examples, scholarships or awards scheme for students and teachers studying Chinese history. The Hong Kong Young Historian of the Year Award (香港青年史學家年獎) offers unlimited quotas of HKD 1000 for awardees choosing Chinese history-related undergraduate programs. A student awardee of Young Historian Year Award said she found students can create “a sense of success during participation”, another one said she identified with her own “responsibility of inheriting and passing the meaning of (Chinese) history”. In these cases of award scheme, personal development and sense of responsibility have been mobilised to integrate with the identification of China effectively in a voluntary way. (郭海晴 研習中國歷史的心得 2012-12-11 左右紅藍綠 RTHK; 香港青年史學家年獎得主稱有承傳歷史的責任

贊成中史獨立成科 HK01 2017 12 10 ) Direct imposition or brainwash is likely leading to alert and counterwork. Hence, the process of negotiation of identifying an individual’s value



needs to be experienced to meet the goal of winning people's heart. The education coated by "rational/sophisticated" sugar will be a more effective tool.

35 <https://thestandnews.com/politics/青年補腦-3-他獲中聯辦邀請-加入共產黨-上/>;  
<https://thestandnews.com/politics/青年補腦-4-他獲中聯辦邀請-加入共產黨-下/>.

36 Recently, a more explicit message was delivered to academics that political correctness is considered to be linked with their careers. In 2018, the state-run media reported that President Xi Jinping made an important instruction to allow Universities and Research Institutes to apply for funds on national science and technology scheme. The press explicitly stated the spirit of Xi's suggestion is to support researchers "who love the country and Hong Kong" participating in the scheme." This act aroused severe worry that it is explicitly an intervention on academic freedom and sent a strong message that academics who are not considered as "loving China and loving Hong Kong" will not be allowed to get access to this or other governmental funding.

37 Awards for teachers and students also function as a structure for building a pro-Beijing social network. To strengthen their influence on teachers, the pro-Beijing teacher group, Hong Kong Federation of Education Workers founded the Outstanding Teachers' Award (2005- ) and Outstanding New Teachers' Award after the mass protests in 2003 and 2014. In the awards presentation ceremonies, the representatives of the CLO were in the first position among officiating guests. One awardee of the Outstanding Student Awards witnessed that their money came from pro-Beijing camp. He said that in the interview processes, under the pressure of the official of the CLO, the student applicants have to answer according to the wishes of the referees. Moreover, some of those elected members will be invited to join the pro-Beijing youth groups. (See <http://ubeat.com.cuhk.edu.hk/親中傑出學生會/>.) There is also a large market of exchange programs as national education has now been broken up into parts and permeated into extra-curriculum activities. A well-known area is exchange programs for students and teachers. For example, the Hong Kong Youth Exchange Promotion United Association arranges a wide range of exchange tours funded by the HKSAR Government. In the year of 2013-2014, the Association received at least HK\$2,500,000 to conduct exchange programs promoting national identity. (See <https://thestandnews.com/politics/解剖維穩社團-青年交流促進會-數十分會無孔不入-拿公帑培養港青民族認同/>.)

38 Liu Xiangling, Note 9 above.

39 Heilmann, Note 2,

40 Po-keung Hui, *Return of People's Heart: Socio-economics in Hong Kong at a time when Totalitarianism is Approaching* (in Chinese)(Hong Kong: Oxford University Press, 2018).

41 In the United States, school civic mission is considered as the guardian of democracy. See the report by Jonathan Gould, Kathleen Hall Jamieson, Peter Levine, Ted McConnell, and David B. Smith (eds.) *Guardian of Democracy: The Civic Mission of Schools* (Philadelphia: Campaign for the Civic Mission of Schools, Leonore Annenberg Institute for Civics of the Annenberg Public Policy Center, the University of Philadelphia, National Conference on Citizenship, the Center for Information and Research on Civic Learning and Engagement, Tufts University, and American Bar Association Division for Public Education (2011), [https://www.carnegie.org/media/filer\\_public/ab/dd/abdda62e-6e84-47a4-a043-348d2f2085ae/ccny\\_grantee\\_2011\\_guardian.pdf](https://www.carnegie.org/media/filer_public/ab/dd/abdda62e-6e84-47a4-a043-348d2f2085ae/ccny_grantee_2011_guardian.pdf).

42 Gould et al., Note 41 above.

43 Different terms may be used to describe similar personality traits. For example,

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“democratic personality” by Nancy Ruttenburg in Nancy Ruttenburg, *Democratic personality: Popular voice and the trial of American authorship*. (Stanford: Stanford University Press, 1998), and “democratic psychological conditions” by Carl Cohen in Carl Cohen, *Democracy* (Athens, GA: University of Georgia Press, 1971).







# *Hong Kong Religious Sectors*

## **Under the Shadow of China's Sharp Power**

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### **Sharp Power and China Factor**

The “rise of China” has been a fact that cannot be evaded in world development in recent years. In 2017, the National Endowment for Democracy published the *Sharp Power: Rising Authoritarian Influence in the Democratic World*, investigating interventions from China and Russia in different parts of the world.<sup>1</sup> Also, Taiwan scholar Wu Jieh-min advocated the “China Factor” as an analytical framework. The China Factor mainly refers to “the process by which the PRC government utilises capital and related resources to absorb other countries and ‘offshore districts’ (such as Hong Kong) into its sphere of economic influence, thereby making them economically dependent on China to further facilitate its political influence.”<sup>2</sup> Wu further pointed out that the operation of the China Factor mechanism required the cooperation of political agencies or local collaborators so that the influence of China could penetrate different spheres of politics, economics, social and cultural, making the China Factor be more impactful. He supplemented that the China Factor also employed ideologies as an inducement, such as the appeal to Chinese nationalism, and the connection between culture, consanguinity and religions.<sup>3</sup>

This article uses the concept of China Factor to investigate how the Chinese Communist Regime (“CCR”) absorbed the religious sector of Hong Kong before and after the handover in 1997. The Chinese influence exhibited directly or indirectly may also reveal the operation of China’s sharp power in the local religious realm.

### **United Front Work in Hong Kong and Religion before 1997**

The China Factor has close relations with the united front work of the CCR. Before 1997, the Hong Kong Branch of the Xinhua News Agency had a coordination department (former known as the United Front Work Department), responsible for the united front work among different sectors in Hong Kong.<sup>4</sup> In 1983, Xu Jiatun and Li Chuwen became the head and first deputy head of the Hong Kong Branch of the Xinhua News Agency respectively, actively deploying for the prospects of the 1997 issue. Li Chuwen had been an ordained pastor of Shanghai Community Church and the Secretary-General of the National Committee of Three-Self Patriotic Movement of the Protestant Churches in China. He joined the Chinese Communist Party as early as 1939 and was an undercover party member infiltrated into the Protestant church. During the Cultural Revolution, his secret party member identity was revealed. As a result,



he was assigned to work in the Shanghai Foreign Affairs Office. Since he was familiar with religious affairs, he was also responsible for the united front work towards the religious sector in Hong Kong.

### Religious Sector Representative Mechanism

According to the Sino-British Joint Declaration of 1984, the Chinese government would implement the principles of “One Country Two Systems”, “Hong Kong people administering Hong Kong”, and “a high degree of autonomy” after 1997, and would also draft the Basic Law. In 1985, the Chinese government established the Basic Law Drafting Committee and the Basic Law Advisory Committee in succession. For the first time, the Hong Kong religious sector was integrated into the Chinese representative mechanism. The religious sector members of the Drafting Committee and the Advisory Committee were inherited from the religious sector representative mechanism of the Chinese People’s Political Consultative Conference. Subsequently, in other Chinese establishments being set up during the transitional period, the religious sector was also allocated a quota.

Chinese Establishments	Religious Sector Representatives
Basic Law Drafting Committee (1985)	Each one representative from Protestant and Buddhist
Basic Law Advisory Committee (1985)	Each one representative from the six major religions
Preparative Committee for the Hong Kong Special Administrative Region (1990)	Each one representative from Protestant and Buddhist
Hong Kong Affairs Advisors (1992)	Each one representative from Catholic, Protestant and Buddhist
Selection Committee for the First HKSAR Government (1996)	Each one representative from the six major religions

**Table 1: Hong Kong Religious Sector Representatives in Chinese Establishments (1985-1996)**

Among the members, Venerable Sik Kok Kwong, the President of the Hong Kong Buddhist Association and Peter K. K. Kwong Bishop of the Anglican Church of Hong Kong, had served as members starting from the Basic Law Drafting Committee, Preparative Committee for the Hong Kong Special Administrative Region (HKSAR), Hong Kong Affairs Advisor, to the Selection Committee for the First HKSAR Government. These religious leaders could be considered as having the full trust of the Chinese government.

### Separation of Church and State with Chinese Characteristics

The “Xin Weisi” instance during 1986 to 1987 was a typical example of how China intended to introduce the concept of separation of church and state with Chinese characteristics into Hong Kong. Xin Weisi was a traditional leftist in Hong Kong called Ma Li. During the 1980s, he used the pen-name Xin Weisi to publish articles on *Mingpao*, reflecting the stance of China on the Basic Law from different aspects. Xin criticised that a “politicising trend” was evolving among the Protestant and Catholic organisations in Hong Kong. He pointed out that it would only repeat the mistakes of the “Caesaropa-

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pism". He advocated for the Basic Law to establish the principle of separation of church and state. In other words, religious organisations are "not suitable to participate in politics". The so-called religious freedom should only be limited to "lawful religious activities", "should not go beyond religious activities to include those 'Caesaropapistic' activities" and, of course, it should not leverage on religious activities to dampen the "freedom" of China in exercising her sovereignty over Hong Kong.<sup>5</sup> Xin's viewpoint is exactly that the CCR has always enunciated the relations between religion and society. Its distortion on "separation of church and state" had immediately triggered responses from many Christians and the rebuttal from the Christian Sentinels for Hong Kong was the most forceful.

### **Facing the Establishment: Resistance in Collaboration**

The Basic Law was promulgated in 1990, and Hong Kong entered the late stage of the transitional period. As 1997 approaches, how to face China had become a challenge to the religious sector of Hong Kong. Since 1995, the six major religions (Buddhist, Taoism, Islam, Confucian, Catholic, Protestant) have begun to organise the religious sector's National Day reception. To counteract this Chinese style National Day activity being directed by the Xinhua News Agency, some Protestants advocated in 1996 to self-organise alternative National Day events, triggering an enormous debate within the Christian Church. Finally, the alternative "National Day Worship" (國家日崇拜) was held amid controversies.<sup>6</sup>

How the religious sector should participate in the Selection Committee of the new government also provoked disputes. According to the Basic Law, the first Chief Executive should be elected by the 400 members of the Election Committee. The Election Committee was composed of four sectors. The religious sub-sector (six major religions) was under the third sector. The arrangement on the religious sector election committee members aroused disputes within the Christian church. The objectors considered the arrangement had violated the principle of separation of church and state and the formation of the Election Committee was also against the principle of democracy. However, supporters opined that the Church should perform its civil responsibility, and indirect participation did not contravene the separation of church and state. Eventually, the Catholic Diocese of Hong Kong decided to participate with "passive cooperation" where the diocese would only be responsible for verifying the identity of candidates. The Hong Kong Christian Council also decided to bear the role of a "nomination committee", and the nominated Protestant Election Committee members would only participate in a personal capacity.<sup>7</sup>

The arguments over Selection Committee and National Day celebration reflected the consideration of some Protestants' attempt to strive for a room (Selection Committee) and to maintain autonomy (National Day) through resistance in collaboration. Opposing camp on the hand queried the viability of such strategy and whether it had violated the principle of Christian faith. It should be noted that whether Protestants should participate and in what way to participate in the Selection Committee have continued to provoke disputes in the formation of the successive Selection Committees since 1997. Protestant and Catholic civic organisations opposing participation in the Selection Committee can be considered as "wrestling" with the "China Factor" and an

opposite reaction.

## **China Factor and the Religious Sector after the Handover**

Since 1998, the Liaison Office of the Central People's Government in the HKSAR (CLO) has replaced the Xinhua News Agency to be the official representative in Hong Kong and has become the principal executor of the operation of the China Factor in Hong Kong.

### ***Strengthening United Front Work towards Christianity after 2003***

In 2003, Hong Kong erupted in protest with 500,000 people participating in the 1 July march, opposing the legislation of Basic Law Article 23 on national security. In the civil society resistance of Article 23, both the Catholic and Protestant had a very clear-cut stance. The then-Bishop of the Catholic Diocese of Hong Kong, Zen Ze-Kun, voiced out his concerns on the legislation repeatedly. The Hong Kong Christian Council also expressed regret on the consultation method of the HKSAR government. Many Protestant and Catholic organisations initiated joint signatures to oppose the legislation of Article 23.

After the 1 July march, Beijing entirely revamped its policy towards Hong Kong, deploying to strengthen its governance. Responding to the role of Catholic and Protestant in opposing the national security legislation, the CLO began to build up gradually its united front networks, hoping to strengthen communications and improve the image of PRC, winning over Protestant and Catholic in supporting Beijing and Hong Kong governments.

Starting 2004, being organized by the Central United Front Work Department and the CLO and undertaken by various units (such as universities, theological seminaries), the "Christianity in China Advanced Forum" has invited representatives of Hong Kong Protestant, Catholic and scholars to attend and exchange views with Chinese officials, scholars and church representatives.<sup>8</sup> Over the years, most of the content of the forum were centred around the positive impacts of Christianity in contemporary Chinese society. The primary purpose was to build up the positive image that the Chinese government valued the social function of Christianity.

In addition, in March 2007, the CLO took the initiative to contact the Hong Kong Christian Council (HKCC) and the Hong Kong Chinese Christian Churches Union (HKCCCU), inviting them to recommend church members to attend the "Young and Middle-aged Protestants Exchange Tour" being held in Beijing in May. Since 2008, the exchange tour has been solely organised by the HKCCCU every October.<sup>9</sup> The title of the exchange tour remains as "national studies class" when being held in China.<sup>10</sup> The content is generally around Chinese political, economic and diplomatic landscapes as well as religious policies.

Starting in 2015, the CLO has also organised the "Hong Kong Protestant Church Pastoral Workers Exchange Class" on Mainland Religious Policy, inviting Hong Kong

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Protestant churches pastoral workers to Shenzhen Zijing Villa for exchange.<sup>11</sup> In May 2018, the CLO organised the “Hong Kong Protestant Institutions Workers National Studies Class”. Besides the general Chinese national power development and religious policy, the content also included the building of the Bay Area and the positive roles of Hong Kong.<sup>12</sup>

Ever since the handover, different sectors and organisations in Hong Kong have formed national studies tours to Beijing every year, through the arrangement of the CLO. It is worth noting that in those national studies mainly for religious members, Protestant has the most extensive scale of participation. However, it has also become a norm for different religions carrying out different formats of exchanges in China and contacts with the United Front Work Department, State Administration of Religious Affairs and other patriotic religious organisations.

#### ***Love the Country, Love Hong Kong and Love the Religion (愛國愛港愛教)***

After 1997, through the format of “specially invited persons”, Beijing began appointing religious leaders as representatives of the Chinese People’s Political Consultative Conference (CPPCC). Among the six major religions, Protestant has been well-regarded. Archbishop and Primate Peter K. K. Kwong of the Anglican Church of Hong Kong were appointed as the 9<sup>th</sup> and 10<sup>th</sup> CPPCC representative in 1998 and 2003 respectively. In 2007, Paul Kwong succeeded as the Archbishop and Primate of the Anglican Church of Hong Kong. He was also appointed as the 12<sup>th</sup> and 13<sup>th</sup> CPPCC representative in 2013 and 2018 respectively. Besides, the Provincial Secretary General of the Anglican Church, Peter Douglas Koon, was also appointed as a representative of the Beijing Political Consultative Conference in 2018 in the capacity of “specially invited person”.

The CCR as an atheist regime, “patriotism” has always been the political foundation of its religious works. Since the handover, how to strengthen Hong Kong people’s Chinese national identity recognition has been a significant concern of the Beijing government. After the Cultural Revolution, the CCR has used nationalism and patriotism to build up its new legitimacy and authority.<sup>13</sup> The notion of “the Chinese dream of great rejuvenation of the Chinese nation” advocated by Xi Jinping in recent years can be considered as an upgraded version of patriotism.

In recent years, Beijing government sees Hong Kong people’s (especially young people) resistance of the “motherland” in national identity recognition as simply a result of failing to “de-colonise”. It attempts to use “patriotic education” to solve the problem of “de-Sinification”. Out of “blood is thicker than water” (血濃於水) Chinese sentiments, Hong Kong religious personalities have tended to positively assert China’s development and the situation of religious freedom.<sup>14</sup> Some people even go further to introduce parts of the Chinese official religious theories (such as religion and harmonious society, religion and the Chinese dream, Sinification of religion) into local religious discourses. This mindset, of accepting in entirety the development opportunities of China, may be affected by the patriotic sentiment. As a result, their words and actions appeared to be embracing China without any critics. Out of embracing the motherland, Hong Kong religious sector has not recognised the ideological problem being involved



in the construction of Chinese Neo-imperial nation. They even actively participated in the discussions of “re-nationalisation” and “Sinification”.

Recently, the HKSAR government is deploying for the legislation of the NAL. Many religious organisations and leaders also indicated support. For example, the representative of the Hong Kong Taoist Association pointed out in the public hearing that national anthem represented the dignity of a country or nation. It was opined that there was the urgency to enact the NAL forbidding insulting behaviour to the national anthem. Otherwise, public order would be affected.<sup>15</sup> Bishop Michael Yeung Ming-cheung of the Catholic Diocese of Hong Kong also emphasised singing national anthem was natural, and society need not be too anxious about the legislation. He even considered that refusing to sing the national anthem was against the social norm.<sup>16</sup> Of course, there are also many civic and religious organisations which oppose the legislation of the NAL, considering it as an infringement of freedom of speech.

Love Hong Kong and love the religion (愛港愛教) also mean supporting the governance of the HKSAR government. Hong Kong religious leaders tended to support the stance of the government on most of the major political disputes in recent years. For example, in 2014, during the political struggle triggered by the fight for “true universal suffrage”, some Hong Kong religious leaders also made public their stances on opposing “Occupy Central with Love and Peace” and civil disobedience. The leftist newspapers even affirmed their opinions.<sup>17</sup> Targeting at the protest of the youth, the Colloquium of Six Religious Leaders of Hong Kong issued the New Year message in 2016, appealing to the young people that “they should respect teachers and esteem their teachings at school, be law-abiding and self-discipline in society”. The message also pointed out that internet information was well developed and there was the need to study the religious truth and wisdom to “protect the pure heart from the pollution of harmful information”.<sup>18</sup>

### ***Establishing the Model of ‘State-lead, Church-follow’ (政主教從)***

The Chinese state and religion dynamic is essentially ‘state leads, Church follows’. The five major religions in China have been incorporated into the United Front work system. Since the HKSAR government does not have a religious bureau, the CLO has been the surrogate in building this kind of state-church relations. Towards the end of 2016 when Tan Tieniu became the deputy director of the CLO, he successively visited different religious organisations in Hong Kong (the Buddhist Association, the Chinese Muslim Cultural and Fraternal Association,<sup>19</sup> the HK Christian Council).<sup>20</sup>

In August 2018 when Tan Tieniu attended the reception of the commencement of Michael Yeung as Bishop of the Catholic Diocese of Hong Kong, he expressed hope that both sides could strengthen liaison and communication, and work together for Hong Kong’s harmony, stability, prosperity and development.<sup>21</sup> In November, he visited the Hong Kong Buddhist Association, affirming the Hong Kong Buddhist sector’s long good tradition in love the country, love Hong Kong and love the religion. He encouraged the Buddhist sector to participate actively in the Belt and Road Initiative and further promote the harmony of society, to continue to play a proactive role in China’s development strategy as well as maintaining Hong Kong’s prosperity and stability.<sup>22</sup>

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In December, the Colloquium of Six Religious Leaders of Hong Kong organised the Six Religions Celebrate the 20<sup>th</sup> Anniversary of the Establishment of the HKSAR and the 40<sup>th</sup> Anniversary of the Leaders Colloquium. The president of the Committee for Ethnic and Religious Affairs of the CPPCC, Zhu Wei-win, led a delegation to attend the celebration and had exchanges with the leaders of the six major religions.<sup>23</sup> At the celebration, the six religious leaders signed the 40<sup>th</sup>-anniversary commemorative certificate with the slogan “Religions united to welcome the 40<sup>th</sup> anniversary, join hands with concerted efforts to promote peace”. Tan Tieniu even witnessed the signing ceremony on the stage.<sup>24</sup>

On 1 February 2018, Tan Tieniu met the leaders of the six major religions at the CLO. He encouraged the religious sector contributing more in promoting Hong Kong society’s harmony and further integration with the grand picture of China’s development. According to the report, the leaders of the six major religions indicated that they would continue to actively support national development and the HKSAR government to administer according to the law.<sup>25</sup> The Chinese “state leads, Church follows” model, where the practice of state-leaders receiving religious leaders periodically to convey state missions and the religious sector pledges allegiance, has been transplanted to Hong Kong.

### **Conclusion**

As early as in 1988, then journalist Emily Lau pointed out in an article that some church leaders had begun to follow the opinion of Beijing. She described the situation as “the unholy alliance of Protestant church”.<sup>26</sup> After 1997, facing the great China Factor and sharp power, this “unholy alliance” setting appears to be more acute. Hong Kong religious sector must be equipped with the power of self-criticism and introspection. The religious sector should avoid being led by patriotic nationalism and becoming part of the local collaborators’ network facilitating Chinese governance and influence in Hong Kong. The author believes there are three inescapable responsibilities:

- (1) Concern for China’s religious freedom. The Hong Kong religious sector should have a comprehensive knowledge of China’s religious policy and the actual situation of freedom. They should critically inspect Chinese official discourses on religious freedom policy to avoid becoming a defender of China’s policy.<sup>27</sup>
- (2) Concern for the civil society of Hong Kong. The Hong Kong religious sector should also pay attention to the critical situation of the local civil society, especially under the intervention from China, whether there are retrogression or erosion of civil rights and core values. The Hong Kong religious sector needs to reflect on whether it has been affected by the deeper layer consciousness of “prosperity and stability” and “harmonious society”, and to see cooperation between state and church as the only viable option for the survival and development of religions. As a result, leading to the avoidance of taking a more active role in defending the civil rights and civil society.
- (3) Reflection on loving the country. The Hong Kong religious sector should deeply reflect on what is patriotic. It should avoid falling into the shackle of Chinese nationalism or patriotism education, viewing loving the country as an indisputable

obligation, or even equating it to religious faith. The real sense of nationalism (or responsibilities towards the nation and society, or the civil responsibilities) should not be simplified as unconditional support of the regime and should not avoid making alternative and critical reflections on social problems and the public sphere.

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# Chinese Sharp Power in Hong Kong

## *An Economic Perspective*

*Hon-Chak Lam, Economist*

The first few years after China resumed exercising sovereignty over Hong Kong, the Chinese Communist Regime (CCR) respected the framework of “one country, two systems” as there was little need for China to meddle in Hong Kong’s internal affairs. There were reasons for it. First, the city-state was still under the spotlight of the international media in the period immediately after the handover. It made sense for China to act with more self-restraint and avoid giving any impression of breaking its promise on Hong Kong’s high degree of autonomy. Second, China was acting more strategically at the time too. As it emerged as a manufacturing power at the turn of the millennium, China was desperate to join the World Trade Organisation (WTO). Keeping its promises to Hong Kong boosted China’s credibility, showing the international community that China was willing to go by the rule book of world trade.

It was not until 2003 that China began to exert its influence over Hong Kong. At the time, the Hong Kong economy was still recovering from the Asian Financial Crisis (AFC) and the burst of the dot-com bubble. Confidence was weak, economic growth as measured by gross domestic product (GDP) was running well below the pre-1997 ten-year average of 5.1%. The ailing housing market also showed no signs of a letup, with property losing 70% of its value since the peak due to a combination of factors, including the introduction of supply-side policy by the Tung administration. The outbreak of Severe Acute Respiratory Syndrome (SARS) that year marked the trough of property prices, which also sent the economy into the abyss.

All these culminated in the mass protest of 2003 against the Hong Kong Special Administrative Region Government under Tung Chee-hwa, which was, by consensus, a trigger for subsequent deployments of sharp power in Hong Kong by the CCR. Without a doubt, the weak economic backdrop, the widening gap between rich and poor and deficient governance were the major contributing factors to the public dissatisfaction with the government.

### **Economic sharp power in Hong Kong: Sugar-coating at its best**

It is often hard in our day-to-day life to distinguish between “soft power” and “sharp power” let alone discern power in an economic context. According to Joseph Nye’s definition, a country’s “hard power” is based on coercion and payments, threat or use of military force or economic sanctions. He said that “sharp power” is a form of hard power that is intangible and when voluntarism is breached becomes coercive.

On that basis, economic sharp power in Hong Kong can be broadly defined as follows.

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It involves the manipulation of information to achieve certain economic and political goals, mostly to enhance China's strength. China's deceptive use of information limits any meaningful choices available to economic agents in Hong Kong and in this way enables China to achieve those goals. For instance, economic policies designed to build closer economic ties and partnership with China will lead to economic over-reliance on China. These economic policies may seem favourable and attractive at the time of proposal but may harm Hong Kong in the longer run, harm which could extend beyond economic losses.

Of course, it is fine to build a closer economic partnership, but when the CCR leverages a closer relationship to force its own rule upon its partner, the policy crosses the line into sharp power. The way this works is similar to how China's creditor imperialism<sup>1</sup> spread along the Belt and Road countries.

Analysing the extent of sharp power is important, as Hong Kong is at the forefront of the clash of ideologies. As a major recipient of sharp power, policies and tricks that have been tried and deployed here may provide clues as to what China would do to other democratic economies as its desire to define its own rules and norms grows.

The following sections discuss some examples of CCR's sharp power tools employed in Hong Kong. Future research will focus on extending the list and proposing ways to respond best.

#### **China's charm offensive: Closer Economic Partnership Arrangement (CEPA)**

The China-Hong Kong free trade agreement (FTA) of Closer Economic Partnership Arrangement (CEPA) was concluded in the summer of 2003 at the tail end of the SARS outbreak. This was the first FTA signed between Hong Kong and China, happening at the time when Hong Kong's economy was at its weakest and a couple of years after China's accession to the WTO in 2001. The agreement encompasses four main areas of collaboration, including trade in goods, trade in services, investment and technical co-operation.<sup>2</sup>

The agreement was portrayed<sup>3</sup> as a courtesy policy from the Chinese government to lift Hong Kong's economy out of the doldrums of SARS; the economy was mired in fears of recession, and the unemployment rate was high. The agreement gave Hong Kong's entrepreneurs earlier access to the Chinese market than foreign competitors so that Hong Kong businesses could enjoy their first-mover advantage in selected sectors.

However, China also gained substantially from CEPA as the arrangement killed two birds with one stone. First, the Chinese authorities experienced first-hand how to deal with competition ahead of the deadline China had committed to for WTO membership at which point selected markets would be fully opened to foreign competition. This acted as a vehicle for China to manage globalisation.<sup>4</sup> The CEPA certainly provided China with the experience of managing trade liberalisation in a way that was in the country's best interest. At the same time, China could count on receiving more foreign



indirect investment via Hong Kong.

Moreover, there were additional advantages: closer economic ties served as China's first attempt to foster economic integration between the two custom areas. Usually, integration happens in stages.<sup>5</sup> The economy first becomes more integrated which then necessitates institutional changes, before the harmonisation of culture and social values.

It is worth noting that our argument does not rest on promoting protectionism. We champion the opportunities given by free trade. The removal of these trade and non-trade barriers should increase economic efficiency, reducing the so-called dead-weight loss of world trade. Trade openness should help facilitate globalisation as production stages (including services) are unbundled according to the comparative advantage of countries and, the factor of production will move to where it becomes most competitive. However, it is when China leverages these closer economic ties to its advantage and distorts public perception of these policies' benefits that it then shades into sharp power.

Indeed, in the fifteen years that have passed since the adoption of the CEPA, we have seen an increasing reliance on Hong Kong's economy on China. Admittedly, this could partly have been a natural result of China's economic expansion, but the CEPA had, without doubt, facilitated that. This is particularly true in the area of trade and logistics.

The business community and union lobby groups<sup>6</sup> in Hong Kong cited participation difficulties concerning CEPA. Despite China's market opening-up, small and medium-sized enterprises were unable to benefit much from CEPA. Even if large local corporates and multinational companies managed to enter the vast Chinese market, they were faced with intense competition from cash-rich state-owned enterprises.<sup>7</sup> Of course, while China is still working on levelling the playing field, the competition remains unfair. Those businesses left in Hong Kong are now facing increased competition from China and risk being squeezed out completely.<sup>7</sup>

One of the original aims of implementing CEPA was to re-industrialise Hong Kong, bringing back or reviving some manufacturing activities, including labour-intensive industries (e.g. textiles and watches), to boost local employment and domestic export activities on the back of eliminating import tariffs. That did not happen, and in fact, the manufacturing output of Hong Kong has shrunk from c.2.0% of GDP in 2003 to just 1.1% in 2017, meaning that Hong Kong has continued to deindustrialise. It appeared that the benefits supposed to be generated from the CEPA were not completely felt in Hong Kong.

Indeed some manufacturers<sup>8</sup> have said that the economic benefits initially enjoyed under the CEPA arrangement have now significantly diminished because most industries are not only open exclusively to Hong Kong enterprises but also to the rest of the world. The promise China made in 2014 that CEPA<sup>9</sup> would automatically match any new preferential treatments for foreigners, is unlikely to change or help the situation.

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Also, the mutual recognition of professional qualifications might have also led to a slow draining of Hong Kong's local talents and the detrimental impact of that on local economic development may only be felt in the long run. According to a leading labour union<sup>6</sup> and academics,<sup>10</sup> the hollowing out of Hong Kong's manufacturing and production-related services industries to the north of the border meant that there was more competition for the same local job, bidding down wages. Besides the brain drain of professional services to the north, the newly unemployed were said to be absorbed in lower-value-added, low-skilled construction, tourism and retail-related industries. As a result, the pay gap widened and the Gini coefficient remained high.<sup>11</sup>

The economic pie, of course, has become bigger as a result of CEPA, but how much of it is taken by Hong Kong? It appears that Hong Kong's relative economic dominance has decreased over time, leaving the city more vulnerable to political pressure from China and cultural integration. It also seems that besides China's ambition to integrate Hong Kong through the CEPA, China wants to gain more control over one of the four main economic pillars of Hong Kong: trade and logistics. The hollowing out of Hong Kong industries will have significantly impacted core economic strength in the long term.

China has a track record of using economic coercion against foreign countries that have upset Beijing. Economic bullying like this serves as a pre-emptive threat to countries that already have strong economic ties with China, forcing them to self-censor their policies. For instance, China banned salmon imports from Norway for six years after Chinese dissident Liu Xiaobo was awarded the Nobel Peace Prize. China is the largest seafood importing country.<sup>12</sup> The relationship between the two countries began to thaw in 2015 when Norway was subsequently admitted as a founding member of the China-led Asian Infrastructure Investment Bank (AIIB). The two countries resumed talks over a free trade agreement in 2017<sup>13</sup> on the condition that Norway respects China's core interests.

### **Economic costs of China's wrath: Individual Visit Scheme (IVS)**

A month after the CEPA framework was introduced in the summer of 2003, the Individual Visit Scheme (IVS) was announced. The scheme is one of the liberalisation measures of CEPA which allows mainland Chinese to travel to Hong Kong on an individual basis; previously they could only visit on business visas or in tour groups. Initially, only four cities in Guangdong were eligible for the IVS, including Dongguan, Zhongshan, Jiangmen and Foshan. The scheme has now expanded to 49 mainland cities, 21 of which are in the Guangdong province.<sup>14</sup>

The tourism sector in Hong Kong was hardest hit during the SARS outbreak in 2003. At its height, the number of visitors tumbled to just 430,000 in May from its then historical high of 1.7 million in December 2002 just before the pandemic hit. Perhaps it took time for international visitors' confidence to return as there were no signs of a fast recovery in tourist arrivals even after the outbreak ended.

The IVS was proposed to give the tourism sector in Hong Kong a shot in the arm,

boosting the ailing retail sector and the economy as a whole. The unemployment rate was high at the time, and the introduction of the scheme could reduce the slack in the labour market relatively quickly by creating low-skilled or even temporary job opportunities in the retail, catering or hotel sector.

Looking beneath the surface revealed that the CCR might be using similar policies to gain influence over Hong Kong's tourism sector. After capturing trade and logistics, China wanted the second growth pillar of Hong Kong's economy to be highly dependent on a single-source market.

We think a more open tourism sector can drive economic growth. It is a large source of foreign-exchange earnings, and it is therefore natural for countries to build closer ties on this front. When China wields its might of tourism to punish other countries on their "wrongdoings" (things that Beijing dislikes), it crosses the line into sharp power.

In fact, China has already used this on numerous occasions to bully other nation states and continues to do so. At the time of writing, it is openly doing so to Palau<sup>15</sup> because of its diplomatic relations with Taiwan. Previously, China also put a tourist ban on South Korea when Seoul decided to install the US Terminal High Altitude Area Defence (THAAD) missile system<sup>16</sup> in response to the threat from North Korea and which China believes is a threat to its national security. Other examples include the ban on group travel to Taiwan since 2016 because of the ruling Democratic Progressive Party's stance on the One-China principle.

These are vivid examples of China's clout, and Hong Kong should be wary of this. Aware of the considerable economic costs of China's wrath, the city may have already self-censored domestic policies that veer from Beijing's party line, or rid itself of any behaviour unwanted by China.

Indeed, Hong Kong's over-reliance on Chinese tourists as a single-source market is conspicuous: more than a third of Hong Kong's retail spending is attributed to Chinese tourists. The amount consumed would be even higher if services spending, such as catering and accommodation were included. In 2017 alone, over 44 million tourists were from China, approximately 75% of the total.

Years of tourism boom—thanks to ever-increasing numbers of visitors from China—has not only led to an imbalanced structure of tourism drivers but arguably, also to imbalanced economic growth in Hong Kong. On top of the impact from CEPA, the jobs created in the retail sector since the inception of IVS have been largely low skilled in nature, and the pay growth of tourism-related jobs had stagnated<sup>11</sup>.

Allocating resources to developing the tourism industry along with retail has indeed boosted consumption, reduced unemployment, and generated a fast economic recovery. However, this might also have led to a sub-optimal allocation of productive capacity within the economy; the dumping of resources is still ongoing<sup>17</sup> and the government has been busy patching things up.<sup>18</sup>

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For instance, resources, namely labour and capital, could have been better allocated to more promising sectors where they might generate significant productivity growth for the economy in the medium to long run. More specifically, the investment could have been allocated to creative industries, reindustrialisation, the digital economy as well as to innovative research.

It appears that economic policymaking was short-sighted in some areas, lacking long-term planning. There is always an opportunity cost in pursuing any policy options, but we think the growing Chinese influence is affecting the policymaking process of Hong Kong despite the “one country two systems”. On top of this, the so-called preferential economic policies from China may have created moral hazards, reducing the Hong Kong leadership’s incentives to formulate appropriate long-term economic policies for the city, or leading to policies being developed simply to deepen ties with China and neglecting market expansion opportunities with international partners.

Besides potential structural imbalances, there are other negative impacts from the IVS. Excess tourist demand for a particular type of goods has led to unintended outcomes, such as monotonous shop-patterns on high streets. Rising tourist demand for retail goods has also pushed up prices of daily products consumed by the mass public. This has led to rising profits for retailers who can then afford higher rents. With even stronger demand pushing prices higher, higher rents will, in turn, fuel goods price inflation further as retailers try to hold on to their margins, forming a negative feedback loop.

### **Iron fist in a velvet glove: China’s Greater Bay Area**

The proposal of building the Greater Bay Area (GBA) in the province of Guangdong marked the CCR’s next attempt to hollow out Hong Kong’s economy. The two initiatives discussed earlier in the chapter reveal China’s intention to hollow out three of the four major economic pillars of Hong Kong, namely, trade and logistics, tourism and professional services. Even though not entirely, these initiatives have already diminished Hong Kong’s economic relevance while significantly increasing Hong Kong’s economic reliance on China. In this GBA initiative, the CCR will focus on hollowing out Hong Kong’s last pillar of growth, the financial industries. The collaboration in innovation industries will result in a brain drain of Hong Kong’s research talents.

The GBA is part of the grand national strategy to prop up domestic demand by building 19 city clusters across China. The extra demand created by these city clusters is supposed to offset the negative impact from the ongoing trade war. Apart from its economic mission to provide a cushion to growth, the GBA has the underlying political goal to integrate Hong Kong and Macau with China further. Economic integration has begun in earnest since the CEPA was adopted. The GBA aims to promote integration on other fronts, such as harmonisation of policies, regulations and institution settings, which in turn will harness economic integration further.

The GBA is not just a rebranding of the Pearl River Delta (PRD), Beijing included Hong Kong and Macau in their strategic plan for the first time. With less than 30 years left



until the key date of 2047, China is busy finding opportunities to integrate Hong Kong fully. Moreover, the GBA is the perfect platform for China to perform its action.

To fully understand China's motives and how the policy came about, it is essential to be briefed on the economic backdrop. As China's urbanisation rate approaches 60%, it enters the second stage of the urbanisation process. Since the country's demographic dividend is ending, China needs to find a new driver to grow sustainably. In addition to industrial upgrading, the answer resides in the agglomeration effect of city clusters. It will unleash hidden productivity growth through closer connectivity. The city clusters will create additional construction and consumption demand that will also become China's future growth engine. Out of the 19 city clusters, the GBA stands out. The area was once the world's factory, and it has slowly morphed into an innovation hub for China. The plan is that with help from Hong Kong, the financial capital with top-tier universities, a collaboration between Shenzhen and Hong Kong would create many synergies, and the GBA as a whole will become the Silicon Valley of China.

China uses its sharp power tools, the media and government officials (See Bruce Lui's section on the use of media for propaganda), to shape public opinion of the GBA so that Hong Kong is portrayed as the primary beneficiary and downplays the fact that China, particularly Shenzhen, needs Hong Kong to develop its innovation and financial industries more than the other way around.

Hong Kong has traditionally been a provider of physical capital to fund China's economic development. Hong Kong's next role is to fund the new innovative economy in China, especially in the GBA. That includes providing more early-stage capital for start-up developments in the tech space. On top of this, Hong Kong has the edge in university research, boasting the highest concentration of the top 100 universities in the world where Shenzhen has none. Shenzhen needs Hong Kong's research excellence, the talents and output to make its R&D more rigorous so that good ideas can be commercialised.

Turning to another sharp power objective, the examples below show how the Chinese government pursues its underlying goal of regional integration. Building cross-border infrastructure is central to achieving the "one-hour living circle"<sup>19</sup> of the GBA initiative. To fully unleash the agglomeration effect, factor mobility (goods, labour and capital) needs to be flowing as freely as possible within the area concerned. Building a mega infrastructure will help achieve that.

Hong Kong's role in linking up the left and the right bank of the Pearl River by the Hong Kong-Zhuhai-Macau Bridge (HZMB) should not be under-estimated. China has been bombarding the Hong Kong public<sup>20</sup> with the good things this bridge will bring to Hong Kong's economy, like bringing in more tourism and cargos to buttress growth. However, China significantly played down Hong Kong's GBA role in radiating economic activity across to the less-developed west bank cities; like the way it has helped the rise of Shenzhen over the past four decades. This information asymmetry has likely reshaped public opinion towards a preference for not only the bridge but also the entire GBA project.

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The building of the Guangzhou-Hong Kong Express Rail Link (XRL) is another example of sharp power tools. The CCR's manipulation or framing of information on the cost and benefit of this project was widespread,<sup>21</sup> while the underlying aim was to further integrate Hong Kong through better physical connectivity with China by joining its high-speed rail network, not to mention creating a precedent of bending the Basic Law allowing Chinese officers to operate on Hong Kong soil (See Benny Tai's section on co-location arrangement).

There are a couple of key projects in the GBA which require considerable input from Hong Kong and which deserve close monitoring: the Qianhai & Shekou Free Trade Zone (Qianhai) and the Lok Ma Chau Loop (LMC Loop). Not only are the sites acting as testing grounds for future integration ideas and mechanisms or new ways of collaboration, but they also have the potential to drain Hong Kong's economic capacity.

Qianhai, for example, is a pilot area that promotes closer collaboration between Hong Kong and China. Strategically located between Shenzhen and Hong Kong airports, Qianhai has the mandate to develop into a major service business hub for the region, covering information technology and technology services, and most surprisingly finance insurance and logistics, which overlap with the core economic pillars of Hong Kong. With a low corporate and personal income tax and a flexible legal environment, the free trade zone risks draining Hong Kong's economic potential to the area (labour and capital), hollowing out Hong Kong's financial industry.

The second project, the LMC Loop, on the other hand, has an innovation theme. The science park will be the flagship collaboration between the two cities. Other than helping Hong Kong to develop its niche in the innovative economy which the CCR would like the public to believe in, Shenzhen will instead benefit from cross-pollination between Hong Kong-based research institutions and China's businesses. It also means Shenzhen can tap into Hong Kong-based international talent with potentially new immigration arrangements within the zone. Going "borderless" will probably be one of the key features of the area. It will provide a testing ground for any future border arrangement, potentially aiming to create the twin city of Hong Kong and Shenzhen.

Unlike the first wave of collaboration between China and Hong Kong in the 1980s and 1990s, the relocation of manufacturing was voluntary in nature. Manufacturers enjoyed the low-wage environment in China and were rewarded with profits, but they were also taking significant risks. However, the move to participate in the GBA initiative, particularly assisting with the development of modern services in China may be more involuntary than before because of the following two factors.

First, the successful deployment of sharp power tools since 2003 has reduced Hong Kong's bargaining power in national economic policies and negotiations. The risk-and-reward trade-off from collaborating with China might be less attractive or even be harmful to the local economy now. The government may be forced to pursue it because it is the national strategy to rejuvenate the Chinese nation or it may simply be kowtowing to other sharp power tools, like the IVS, because of its over-reliance on the Chinese economy.

Moreover, there is the chance that the Hong Kong administration and the members of the LegCo may have become "Chinese agents of influence",<sup>22</sup> given the solid evidence from elsewhere, including Australia and Canada. Consequently, the govern-

ment may no longer be assessing policies or making decisions purely in the interests of Hong Kong.

## **Conclusion**

In this report, we identified a few economic sharp powers projected by the CCR in Hong Kong. It involves the misleading use of information, limiting the voluntary choices of Hong Kong, to achieve certain economic and political goals, mostly to enhance China's strength.

These economic policies typically were designed to build closer economic ties and partnership, but will inevitably lead to economic over-reliance on China. Moreover, these policies sometimes have an element of transfer of knowledge and know-how in return for some short-term economic benefits. The aim is to boost China's economic strength in the long run.

In the case of Hong Kong, the sharp power identified here appears in three policy areas, including free trade agreements, tourism and regional integration. These economic policies seemed benign and attractive at first, but have proved to have adverse effects on Hong Kong, and the impact could extend beyond economic losses.

These sugar-coated initiatives all have hidden agendas to make China stronger economically and to weaken the relative position of the targeted country. These sharp power tools may have caused irrevocable changes in the local economy, and in some cases, caused the loss of core economic strengths: in the case of Hong Kong, rendering its economic share to shrink vis-à-vis China. This reduces Hong Kong's bargaining position when negotiating policies with China, and means losing out on influencing future strategic decisions that affect Hong Kong. With less economic relevance to China, there are also signs that Hong Kong's local culture and social values are gradually becoming compromised.

Analysing the extent of sharp power is important, as Hong Kong is at the forefront in the clash of ideologies. As a major recipient of sharp power, this report has the purpose of making the international community aware of the policies and tricks that have been tried and deployed here, which provide clues as to the sharp power options China has at its disposal when China targets other democratic economies as its desire to define its own rules and norms grows.

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## **What can be done about China's Sharp Power in Hong Kong?**

In general terms, power is the ability of the powerholder to cause others to do what he wishes. The hardness, softness, and sharpness of a power illustrate the nature of the power and the medium through which the power operates. In short, hard power coerces, soft power attracts, and sharp power deceives. How the power works depends on the ultimate goal of that the powerholder wants to achieve.

Soft power and sharp power may seem to be very similar as both aim to establish cultural values. The difference is that soft power acts through non-government institutions in the business sector and in the civil society spontaneously without the involvement of the government and it is open for others to appreciate and embrace those values voluntarily. However, sharp power act through the same agents as soft power but they are under the direction of the government utilising resources supplied by the government to achieve the political goal of the government. Authoritarian rule is repackaged and legitimised as something good, but it conflicts with values respecting human dignity.

### **The Logic of China's Sharp Power in Hong Kong**

To understand why and how China's sharp power operates in Hong Kong, one has to ascertain the ultimate goal that the CCR wants to achieve in the governing of Hong Kong. Hong Kong has now been under the sovereignty of the CCR for more than twenty years. The guiding principle of CCR's policy towards Hong Kong is "One Country Two Systems." Even though the CCR has repeatedly promised that Hong Kong would enjoy a high degree of autonomy in the Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law, the CCR will never allow Hong Kong to be out of her control. The overriding concern of the CCR is that if it loses control over the territory, Hong Kong could be used as a base of subversion threatening CCR's one-party rule in Mainland China.

At different stages, the CCR uses a different kind of powers. Hard power like military force or economic might may not be the appropriate form of power to achieve its goal within the specific context of Hong Kong, but the CCR has not promised that hard power will never be used in Hong Kong. The CCR mainly relied upon soft power in the early years of the HKSAR hoping that "the handover of the human heart" of the majority of Hong Kong people would in some way be completed within ten years after the CCR resumed to exercise sovereignty over Hong Kong. However, the mere use of soft power was proved to be ineffective. Since 2003, the CCR has been using sharp power to achieve the same goal.

As the CE will never be democratically elected and must be under CCR's direction, the objective of China's sharp power in Hong Kong is to help the CE gain more political legitimacy to compensate the political legitimacy deficit long suffered by the HKSAR Government.

## CONCLUSION

### *China's Sharp power in Hong Kong*

The very first thing is to develop an official discourse to justify the continuation of the undemocratic rule and the advancement of authoritarianism in Hong Kong. The policy of “One Country Two System” is given a new interpretation emphasising the priority of protecting national interests including national sovereignty, national security, and development interests of the nation. This is an unattractive good to market especially after the Umbrella Movement in 2014.

Two things are being done to deal with the political legitimacy deficit. One is to silence all voices supporting the discourse of the opposition camp, questioning the official discourse, or proposing alternative discourses to the official discourse. Another thing is to promote the official discourse in all sectors in the society of Hong Kong. Tools of sharp power are used in both aspects.

The sharpness of the power is provided mainly by economic inducement though other benefits can also be used and coercion is always at the background. The underlying assumption is that people who are economically independent will have a greater tendency to be also politically independent. In order to reduce the political autonomy of people, sharp power aims to make them more and more economically dependent on the powerholder.

Like soft power, sharp power operates mainly in the cultural dimension, so the powerholder needs to have many cultural agents who will act following its master plan. In addition to the political agents and economic agents in the political and the business sectors respectively, cultural agents are especially needed in the civil service, media, professional sectors, civil society groups, religions, academia, and schools. Cultural agents can be institutions and individuals.

At the institutional level, the CCR can develop her cultural agents through formation of new institutions, acquisition of ownership, shareholding, appointment of chairmanship or membership, business cooperation, promise of business opportunities, market share, promotion, public recognition, prize and awards, provision or withdrawal of benefits, donations, or subsidies, etc. At the individual level, cultural agents may be infiltrated to existing institutions and gain domination in the institution through the use of sharp power. Current members in existing institutions may be converted or recruited to become CCR's cultural agents. Training and opportunities will be provided to young members in existing institutions so that one day they will rise to take up critical positions in the institution.

Cultural agents act in two main ways. First, a targeted person may be attacked, threatened, pressurised, blackened, criticised, discredited, condemned, marginalised or even be replaced by cultural agents working in an orchestrated manner. Second, cultural agents will actively promote the official discourse in their networks by justifying actions implementing the official discourse including coercive acts limiting people's freedoms.

They may use the official discourse as the justification to reduce choices available to



people. If all possible options are consistent with the official discourse, no matter what the decision of the people is, all things will be under the control of the authoritarian rule. Even worst, people may mistakenly feel that they have free choices.

Cultural agents will also actively recruit other people to join their team and increase the number of supporters of the authoritarian rule through the provision of economic benefits. At the critical moment, they will be mobilised to counteract the actions of the opposition. They may even brainwash people especially the young, the less educated and those who are in need.

The overall goal is to raise the acceptance level of the CCR and the HKSAR Government in Hong Kong.

### **Counteracting China's Sharp Power in Hong Kong**

At least three things can still be done by the people of Hong Kong to counteract the advance of China's sharp power.

#### ***People with power***

There must be people responsible for exercising powers in implementing governmental policies and laws. They include judges of the courts, senior officials as well as the middle and low-ranking administrators in the HKSAR Government. The CCR still needs to rely on them to directly govern Hong Kong. It is hoped that at least some of these people with power have not given up their commitment to defend the core values of Hong Kong including the rule of law, human rights and democracy even though they are now working in very hostile environments.

Like people in similar positions in other authoritarian regimes who are reform-oriented, they may try to do something to defend the core values of Hong Kong at the margins without directly impinging on the core interests of the authoritarian regime. In using their discretionary powers under the law, they can smartly and strategically protect or even create more political space for activists to continue their struggle by organising deliberate, strategic and repeated social actions against the authoritarian rule.

If the civil society of Hong Kong remains to be active in upholding the core values of Hong Kong, people with power in Hong Kong may be able to shield themselves from further direct and indirect interferences from their authoritarian master and may even create opportunities for Hong Kong to revert to the democratic path at critical moment in the future.

It is difficult to know how many of them are prepared to do so. One thing is sure that after leaving their official positions, these people with power are still citizens of Hong Kong like everyone.

## CONCLUSION

### *China's Sharp power in Hong Kong*

#### ***People with votes***

Limited elections are still being held in Hong Kong. With the continuous support of 50-60% of the votes in elections, the democratic camp still has a chance to bring a liberalising electoral outcome (Howard and Roessler, 2006). Unlike other semi-authoritarianism, it is not possible for the opposition camp in Hong Kong to form the government even if they can win the majority in the LegCo. Nevertheless, they should be able to slow down the process of authoritarianisation in Hong Kong more effectively.

The opposition camp must put aside their differences and form a political coalition. Also, the election bloc so built has to organise a comprehensive political campaign to achieve the following things. First, elaborate voter registration and voter turnout drives are to be orchestrated. Second, voters have to learn how to strategise their votes. Third, candidates from the opposition camp must be made more politically attractive to voters. Fourth, the opposition camp has to send a clear political signal to voters that it has a strong commitment to win and demonstrate to voters that it can govern effectively. Fifth, a widespread sense that victory is possible must be created. These demands are high as the mobilisation, unity, skill, and heroism needed are far beyond what would generally be required for electoral victory in a democracy.

#### ***People with voice***

As the CCR aims to use the tools of sharp power to reshape the political culture of Hong Kong, the main battlefield is a cultural one. In this cultural battlefield, to fight back against the advancement of the authoritarian voices, everyone with a voice can be our soldiers. For those who have already awakened, their task is to help other people to overcome the deception of China's sharp power through their voices. The awakened can assist other people to make clear discernment in a maze of messages produced by China's sharp power and encourage them to rise up, to voice out, to stand firm and to support each other in resisting China's sharp power.

Education is the key, and it can take many forms. It can be education at all levels of education, from primary school to university. It can also be creative and multi-dimensional social education through the media. These methods can bring cultural changes through a comparatively long habit-building process.

A social movement can also be another kind of education bringing long-lasting change in culture. The injustice of the system can be dramatised by a social movement of civil disobedience in such a way that no people can ignore its existence. Civil disobedience challenges people's established beliefs, values and attitudes. They cannot escape from reflecting the meaning and significance of truth and justice. New attitudes or consciousness may be formed after existing attitudes towards current institutions are being questioned and seriously reconsidered. This is what has been achieved by the Umbrella Movement in 2014.

Even if the Umbrella Movement failed to bring about immediate institutional change, The foundation for future actions to bring about institutional changes has been laid by the cultural changes that the movement brought. At a critical moment in the future,

civil disobedience can be used by people to transform the system extra-constitutionally.

A social movement of civil disobedience may still be the most sustainable method to defend the core values of Hong Kong even though the cost for breaking the law is much higher now. Protesters in Hong Kong has to be smarter, prepare itself better and vigilantly wait for the critical moment to come.

It may be too optimistic to say that there can still be a very slight chance for Hong Kong to revert to the democratic path. Nonetheless, if everyone in the community is willing to do something to defend the core values of Hong Kong, there can still be hope that the further advancement of China's sharp power in Hong Kong at least can be slowed down or even be stopped.

### **What should the international community do?**

As former President of the United States Barack Obama said, the world now “stands at a crossroads - a moment in time at which two very different visions of humanity's future compete for the hearts and the minds of citizens around the world.”

China's sharp power is promoting one of the two visions. It taps the unease that is felt by people when they encounter neighbours practising different cultures and the fears that their economic security is slipping away, their social status and privileges are eroding, and their cultural identities are being threatened. Mutual distrust and hatred are incited through the tools of sharp power so that the continuation of the authoritarian rule can be legitimized.

Riding on populism, this malign version of humanity's future is rapidly spreading. It can only be stopped if there are people still have hope and persist in upholding the other benign vision which embraces the values of justices, fairness, equality, freedoms and genuine democracy.

What Hong Kong people are doing is not just for the sake of Hong Kong. Hong Kong is now at the forefront of the conflicts between the liberal world and the authoritarian world. We hope that members of the international community who share the same vision can join forces with Hong Kong people to fight back China's sharp power. At least, the following things can be done.

1. International linkages between civil societies around the world and the civil society of Hong Kong should be built. The relationship should be long-term, multi-dimensional, and mutual. More international exchanges can be arranged. If the civil society of Hong Kong remains to be robust with its capacity enlarging, the counteracting forces against China's sharp power in Hong Kong will be able to grow stronger.
2. Foundations can be established to fund scholarships in Hong Kong study, programs and projects on Hong Kong.
3. There is real worry that China's sharp power will manipulate elections in Hong

## CONCLUSION

### *China's Sharp power in Hong Kong*

- Kong in the future. Election monitoring by independent and international observers should be arranged to ensure the fairness of the elections in Hong Kong.
4. The international community can continue to play close attention to any incident of abuse of the rights of Hong Kong people by China's hard and sharp powers. The Hong Kong Civil Hub will provide up-to-date information to the international community through our online newsletter. Strong statements of condemnation can be issued in cases of human rights infringement.
  5. If there is any chance to meet with officials from Beijing or Hong Kong in different occasions, issues of democratic development, maintenance of the rule of law, and human rights infringements in Hong Kong can be raised. The officials can be demanded to address the concerns directly on those occasions.



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